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Pages 737 to 824

CONTENTS IN THIS ISSUE

Pages 750 to 823 include **ARC 2884B** to **ARC 2912B**

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Filed, Procurement of goods and
services of general use, ch 105;
rescind 401—chs 7, 8, 9 **ARC 2885B** 796

AGENDA

Administrative rules review committee 742

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Filed, Iowa organic program, 47.2 to 47.4,
47.6 to 47.12 **ARC 2887B** 806

ALL AGENCIES

Schedule for rule making 740
Publication procedures 741
Administrative rules on CD-ROM 741
Agency identification numbers 748

CITATION OF ADMINISTRATIVE RULES 739

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Notice, Approval of postsecondary schools,
21.1 **ARC 2884B** 750

DEAF SERVICES DIVISION[429]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Notice, Updating of information and
procedures, 1.2, 1.3, 2.1, 2.3, 2.4,
3.14(2), 4.1 **ARC 2890B** 750

ELDER AFFAIRS DEPARTMENT[321]

Notice, Long-term care resident's advocate/
ombudsman, amendments to ch 8
ARC 2904B 753
Notice, Resident advocate committees; role
of area agencies on aging, 9.1(2), 9.2(4),
9.3(1), 9.4(3), 9.6(2), 9.8(2), 9.10(1),
9.11(2), 9.13, 9.14 **ARC 2905B** 757

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Filed, Prohibition on contributions and
independent expenditures by foreign
nationals, 4.28 **ARC 2889B** 809
Filed, Political corporations, 4.50, 4.51
ARC 2888B 809

HUMAN SERVICES DEPARTMENT[441]

Notice, Confidentiality of records—compliance
with health insurance portability and
accountability act (HIPAA), amendments
to chs 7, 9, 13, 28, 75, 93 **ARC 2901B** 758
Notice, Application and investigation—on-line
application for HAWK-I, 76.1 **ARC 2903B** 760
Amended Notice, Medicaid coverage
limitations for drugs—prior authorization,
preferred drug list, 78.1(2), 78.28(1)
ARC 2906B 761
Notice, HAWK-I program, 86.2, 86.3
ARC 2892B 761
Notice, Child care providers receiving child
care assistance—sanctions for receiving
funding by fraudulent means, 170.1 to
170.9 **ARC 2893B** 762
Filed Emergency, Confidentiality of records—
compliance with health insurance portability
and accountability act (HIPAA), amendments
to chs 7, 9, 13, 28, 75, 93 **ARC 2902B** 771
Filed, Rent subsidy program—eligibility,
53.1 to 53.4, 53.5(2) **ARC 2895B** 810
Filed Emergency, Extension of Medicaid
eligibility—expanded specified low-income
Medicare beneficiaries, 75.1(36)
ARC 2894B 795
Filed, Medicaid for employed people with
disabilities—increase in assessed premium,
75.1(39) **ARC 2898B** 811
Filed, Medicaid policies for hospitals receiving
payments from the graduate medical education
and disproportionate share fund, 79.1(5),
79.1(16) **ARC 2899B** 812
Filed, Adoption subsidy program, 130.3(3),
201.1, 201.3 to 201.5, 201.6(1) **ARC 2900B** 813

Continued on page 739

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Capitol Building
Des Moines, IA 50319
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HUMAN SERVICES DEPARTMENT[441] (Cont'd)

- Filed, Department response to report of suspected dependent adult abuse; maintenance and confidentiality of abuse information, 176.6(12), 176.10, 176.13 **ARC 2896B** 815
- Filed, Voluntary foster care placements, 202.3 **ARC 2897B** 816

INSPECTIONS AND APPEALS DEPARTMENT[481]

- Notice, Registered amusement devices, 104.1, 104.3, 104.4(3), 104.6, ch 105 **ARC 2912B** 764

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

- Notice, Resource enhancement and protection program—public communications, 33.5(1), 33.22, 33.30(4), 33.40(5), 33.50 **ARC 2911B** 766
- Filed, Nonresident deer hunting, 94.8(2) **ARC 2910B** 817
- Filed, Block deer hunts, 106.11(4) **ARC 2909B** 818

NATURAL RESOURCES DEPARTMENT

- Notice of public hearing—Iowa drinking water revolving fund intended use plan 767

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Filed, Podiatrists, 222.3(2), 223.1 to 223.4, **ARC 2891B** 818

PUBLIC HEARINGS

- Summarized list 746

PUBLIC SAFETY DEPARTMENT[661]

- Filed, Fire marshal—fire safety for hospitals, licensed health care facilities and assisted living facilities, 5.626, 5.900 to 5.925 **ARC 2886B** 819

REVENUE DEPARTMENT[701]

- Notice, Determination of value of utility companies, 77.1, 77.4, 77.5(1), 77.6 to 77.8 **ARC 2908B** 767
- Notice, Penalties for sale of cigarettes or tobacco products to persons under 18 years of age, 81.12(1) **ARC 2907B** 769

TREASURER OF STATE

- Notice—Public funds interest rates 770

USURY

- Notice 770

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2003

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Friday, November 7, 2003	November 26, 2003
12	Wednesday, November 19, 2003	December 10, 2003
13	Friday, December 5, 2003	December 24, 2003

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

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The Administrative Rules Review Committee will hold a special meeting on Monday, November 10, 2003, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Procurement of goods and services of general use; purchasing procedures for state agencies;
 special rules for the acquisition of data processing equipment, services, or software;
 centralized purchasing, rescind 401—chapters 7 to 9; adopt 11—chapter 105, Filed **ARC 2885B** 10/29/03

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Iowa organic program, 47.2, 47.3(2)“a” and “b,” 47.3(5)“a” and “b,” 47.3(5)“c”(3),
 47.3(5)“d,” 47.4(2)“c” and “d,” 47.6, 47.7, 47.8(1), 47.9, 47.9(3), 47.10,
 47.11, 47.11(1), 47.11(1)“b”(2), 47.12, Filed **ARC 2887B** 10/29/03
 Registration of Iowa-foaled horses and Iowa-whelped dogs,
 62.4, 62.5, 62.43, 62.44, Notice **ARC 2873B** 10/15/03
 Low pathogenic avian influenza (LPAI), 64.1, 64.185 to 64.192,
Filed Emergency After Notice **ARC 2871B** 10/15/03

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

Agency procedure for rule making, ch 2, Filed **ARC 2858B** 10/15/03
 Declaratory orders, ch 3, Filed **ARC 2857B** 10/15/03
 Due process, ch 4, Filed **ARC 2856B** 10/15/03
 Contested cases, ch 5, Filed **ARC 2855B** 10/15/03
 Public records and fair information practices, ch 6, Filed **ARC 2854B** 10/15/03
 Uniform rules for waivers, ch 7, Filed **ARC 2853B** 10/15/03
 Postsecondary schools—approval criteria, 21.1, Notice **ARC 2884B** 10/29/03

DEAF SERVICES DIVISION[429]

HUMAN RIGHTS DEPARTMENT[421]“umbrella”

Division procedures and services; commission voting procedures;
 fees; forms, 1.2, 1.3(2)“a,” 1.3(4), 1.3(5)“c,” 2.1, 2.3(1)“c” and “d,”
 2.3(2) to 2.3(5), 2.3(6)“c,” 2.3(7), 2.3(8), 2.4(2)“c,” 2.4(3), 3.14(2)“e,”
 4.1(9) to 4.1(13), Notice **ARC 2890B** 10/29/03

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Special education endorsements—classification of licenses,
 15.3(8)“c,” 15.4, Notice **ARC 2881B** 10/15/03

ELDER AFFAIRS DEPARTMENT[321]

Long-term care resident’s advocate/ombudsman, ch 8, Notice **ARC 2904B** 10/29/03
 Resident advocate committees, 9.1(2), 9.2(4), 9.3(1), 9.4(3), 9.6(2)“c,”
 9.8(2), 9.10(1), 9.11(2)“b,” 9.13, 9.14, Notice **ARC 2905B** 10/29/03

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Federal effluent and pretreatment standards and associated analytical methods—
 references updated, 60.2, 62.4, 62.4(12), 62.4(38), 62.5, 63.1(1)“a,”
Filed Without Notice **ARC 2864B** 10/15/03
 Water pollution control—scope of title, definitions, forms;
 criteria for rating and ranking projects for the water pollution control state revolving fund;
 state revolving fund loans for wastewater treatment and water pollution control;
 onsite wastewater treatment system assistance program, chs 90 to 92,
 93.1, 93.3, 93.4(2)“c,” 93.10, 93.12, Filed **ARC 2865B** 10/15/03
 Financial assurance requirements for municipal solid waste landfills, 111.3, 111.4, 111.5(1),
 111.5(2), 111.6(2)“a,” 111.6(9)“f” and “g,” 111.8, 111.8(4), Notice **ARC 2863B** 10/15/03

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Prohibition on contributions and independent expenditures by foreign nationals,
 4.28, Filed **ARC 2889B** 10/29/03
 Political corporations, 4.50, 4.51, Filed **ARC 2888B** 10/29/03

HUMAN SERVICES DEPARTMENT[441]

Confidentiality of health information—compliance with health insurance portability and accountability Act (HIPAA), 7.1, ch 9 preamble, 9.1, 9.2, 9.3(1), 9.3(5), 9.3(6), 9.3(7)“a” to “c” and “e,” 9.4(3), 9.4(5), 9.4(6)“a,” 9.5(2), 9.5(3), 9.5(7), 9.6, 9.7, 9.7(1)“a” to “e,” 9.7(2), 9.7(3), 9.8 to 9.10, 9.10(1) to 9.10(10), 9.10(12), 9.10(15), 9.10(17) to 9.10(19), 9.10(21) to 9.10(29), 9.11, 9.12(1), 9.12(1)“a,” 9.12(1)“a” (1) and (3) to (6), 9.12(1)“b,” 9.12(1)“b”(1), (5), (7) and (8), 9.12(1)“e,” “g” and “h,” 9.12(2)“a,” 9.12(2)“a”(2), 9.12(2)“b”(1), (3), (5) and (8), 9.12(2)“c,” 9.12(2)“c”(1), (2) and (6), 9.13(2), 9.13(3), 9.14, 9.15, 13.5(4)“b”(7), 28.12(1), 75.22(10), 93.109(2)“c,” 93.111(1)“a”(4), 93.135(4), <u>Notice</u> ARC 2901B , also <u>Filed Emergency</u> ARC 2902B	10/29/03
Collection of overpayments, 7.5(6), 7.5(6)“a” and “b,” 7.5(7), 7.7(1), 11.1, 11.4(2), 11.4(3)“a,” 11.4(4), 11.4(5), 11.4(7), 93.151, 93.151(1), <u>Filed</u> ARC 2839B	10/15/03
Deadline for county applications for risk pool funding, 25.63(1) to 25.63(3), 25.64, <u>Notice</u> ARC 2851B	10/15/03
Mental illness special services fund, rescind ch 39, <u>Filed</u> ARC 2850B	10/15/03
Rent subsidy program, ch 53 preamble, 53.1, 53.2(2), 53.2(4), 53.2(5), 53.3(1), 53.3(1)“d,” 53.3(2), 53.4(1), 53.4(3), 53.5(2)“a,” <u>Filed</u> ARC 2895B	10/29/03
Extension of limited Medicaid eligibility for expanded specified low-income Medicare beneficiaries, 75.1(36), <u>Filed Emergency</u> ARC 2894B	10/29/03
Premiums assessed for coverage under the Medicaid for employed people with disabilities group, 75.1(39)“b”(1), <u>Filed</u> ARC 2898B	10/29/03
Medicaid participation by advanced registered nurse practitioners, 75.17, 76.9(7)“b,” 77.26, 77.31, 77.36, 78.1(21), 78.21(1), 78.23, 78.25(3), 78.29, 78.31(5), 78.35, 78.39(1), 78.40, 79.1(2), 79.14(1)“b”(11) and (18), 79.14(1)“d,” 84.3, 88.5(2)“a”(9), 88.25(2)“a”(9), 88.41, 88.44(1) to 88.44(3), 88.44(3)“a,” 88.45(1), 88.45(2)“b” and “f,” 88.45(5)“a,” 88.46(6), 88.47(1)“b,” 88.48(1)“h,” 88.50(3), <u>Filed</u> ARC 2846B	10/15/03
Valid Medicaid applications—addition of on-line HAWK-I application, 76.1, 76.1(1)“b,” 76.1(2)“c,” 76.1(6), <u>Notice</u> ARC 2903B	10/29/03
Medicaid home- and community-based services (HCBS) waiver for persons with mental retardation, 77.37(14)“e”(2) and (4), 77.37(24) to 77.37(26), 78.41(11) to 78.41(13), 79.1(2), 83.66, <u>Filed</u> ARC 2845B	10/15/03
Reimbursement to hospitals and hospital-based nursing facilities for services to recipients who are “dually eligible,” 78.3, 79.1(22), 81.6(20)“a” and “c,” <u>Filed</u> ARC 2844B	10/15/03
Supplemental payment adjustment applicable to physician services at publicly owned acute care teaching hospitals, 79.1(2), 79.1(7), <u>Filed</u> ARC 2843B	10/15/03
Hospitals—payments from the graduate medical education and disproportionate share fund, 79.1(5)“a,” 79.1(5)“k”(1), 79.1(5)“y”(2), (3) and (5) to (9), 79.1(16)“a” and “j,” 79.1(16)“j”(1), 79.1(16)“v”(2) and (3), 79.1(16)“w,” <u>Filed</u> ARC 2899B	10/29/03
Reimbursement policies for prescription drugs, 79.1(8)“a”(1) and (3), 79.1(8)“g” and “i,” <u>Filed</u> ARC 2841B	10/15/03
Recipient copayment for Medicaid services, 79.1(13)“a,” “b” and “d,” <u>Filed</u> ARC 2842B	10/15/03
HAWK-I program, 86.2(2)“a”(2), 86.2(3)“b,” 86.3(2), 86.3(4), <u>Notice</u> ARC 2892B	10/29/03
Child support parental obligation pilot projects—expiration date extension, 100.3(2)“i,” 100.8, <u>Filed Emergency After Notice</u> ARC 2840B	10/15/03
Child care licensing and registration—criminal and child abuse record checks, 109.1, 109.2(1)“f,” 109.2(4)“c,” 109.2(5)“c,” 109.6(1)“e,” 109.6(2)“d,” 109.6(5)“b”(2), 109.6(6), 109.9(1)“b” and “c,” 110.1, 110.7(3), 110.7(3)“a” to “d,” 110.7(5), 110.14, <u>Filed</u> ARC 2849B	10/15/03
Adoption subsidy program, 130.3(3)“ab,” 201.1, 201.3(1)“c,” “g” and “h,” 201.3(2), 201.3(3), 201.3(5), 201.4, 201.4(4), 201.4(4)“a” and “b,” 201.5(1), 201.5(2), 201.5(7), 201.5(9), 201.6(1)“a”(1), (2), (4), (6) and (7), <u>Filed</u> ARC 2900B	10/29/03
Reimbursement rates for purchase of service providers and rehabilitative treatment and supportive services; extension of suspension of department’s ability to renegotiate rates, 150.3(5)“p”(2), 150.3(5)“p”(2)“3” and “4,” 185.112(1)“k,” <u>Filed</u> ARC 2848B	10/15/03
Child care assistance funding—sanctions for fraud, ch 170 preamble, 170.1, 170.4(3)“b” and “c,” 170.4(7)“a” tables I and II, 170.4(7)“a”(1), 170.7, <u>Notice</u> ARC 2893B	10/29/03
Eligibility for child care assistance, 170.2(2)“b”(4), 170.2(3), <u>Filed</u> ARC 2847B	10/15/03

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

Dependent adult abuse, 176.6(12), 176.10(3)"b"(6) and (7), 176.10(3)"c"(8),
176.10(5), 176.10(6), 176.10(11), 176.13(2), 176.13(3),

Filed **ARC 2896B** 10/29/03

Voluntary foster care placements, 202.3(1), 202.3(2), 202.3(3)"a" and "b,"

202.3(4), Filed **ARC 2897B** 10/29/03

INSPECTIONS AND APPEALS DEPARTMENT[481]

Bingo—exceptions to licensing requirements, 103.3(4), Notice **ARC 2862B** 10/15/03

Registration of electrical and mechanical amusement devices, 104.1, 104.3,

104.4(3)"f" and "g," 104.6"1," adopt ch 105, Notice **ARC 2912B** 10/29/03

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

HMOs—deductibles and coinsurance charges, 40.16, Filed **ARC 2861B** 10/15/03

MANAGEMENT DEPARTMENT[541]

Grants enterprise management system, adopt ch 11, Notice **ARC 2587B**, Terminated **ARC 2838B** 10/15/03

Local government innovation fund committee, adopt ch 15, Notice **ARC 2872B** 10/15/03

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Resident, special and temporary physician licensure, 10.1, 10.3(1)"a,"

10.4(2)"d," 10.5(2)"b"(3), Notice **ARC 2870B** 10/15/03

Iowa physician health committee, 14.2, 14.3, 14.5, 14.7(1)"a,"

14.9(3), 14.10, 14.11, Filed **ARC 2869B** 10/15/03

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Resource enhancement and protection (REAP) program, 33.5(1), 33.22, 33.30(4)"f" and "g,"

33.40(5), 33.50(4), 33.50(5), Notice **ARC 2911B** 10/29/03

Antlerless-only deer licenses for nonresidents, 94.8(2), Filed **ARC 2910B** 10/29/03

Block deer hunts, 106.11(4)"a"(7) and (8), Filed **ARC 2909B** 10/29/03

PERSONNEL DEPARTMENT[581]

IPERS, 21.10(12), 21.10(16), 21.10(19), 21.11(9), 21.16(6), 21.22(1)"d," 21.24(2)"f,"

21.24(3), 21.24(5)"f," 21.24(6)"d," 21.24(18), 21.30, Notice **ARC 2875B** 10/15/03

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Behavioral science examiners, 30.4(2), 30.4(3), 30.6(3), 30.6(4), 31.5(2)"b"(3), 31.5(3),

31.5(4), 31.10, 31.13 to 31.15, ch 33, 34.1(5) to 34.1(9), Notice **ARC 2859B** 10/15/03

Podiatry examiners, 222.3(2)"b" to "g," 223.1 to 223.4,

Filed **ARC 2891B** 10/29/03

Respiratory care examiners, 260.4(2), 260.4(3), 260.6(3), 260.6(4), 261.8,

261.11 to 261.13, ch 263, 264.1(5) to 264.1(9), Notice **ARC 2860B** 10/15/03

PUBLIC SAFETY DEPARTMENT[661]

Fire safety—exits, 5.2, 5.50 to 5.65, Filed **ARC 2852B** 10/15/03

Fire safety—hospitals, licensed health care facilities, and assisted living facilities,

5.626(1), 5.626(4), 5.900 to 5.925, Filed **ARC 2886B** 10/29/03

REVENUE DEPARTMENT[701]

Additional first-year depreciation allowance; research activities credit,

39.6(3)"a," 40.60, 41.5(10), 42.2(11)"b," 52.7(3)"c," 52.7(5)"c,"

53.1, 53.22, 59.23, Filed **ARC 2879B** 10/15/03

Ethanol blended gasoline tax credit, 42.16, 52.19, Filed **ARC 2878B** 10/15/03

Investment tax credit for equity investment in qualifying business

or community-based seed capital fund; contingent tax credit

for investments in Iowa fund of funds, 42.18(1), 42.18(3),

52.21(3), 58.11(3), Notice **ARC 2877B** 10/15/03

Endow Iowa tax credits, 42.20, 52.23, 58.13, Notice **ARC 2876B** 10/15/03

Determination of value of utility companies, 77.1(1), 77.1(13), 77.4(4) "g" to "j,"

77.4(6), 77.5(1), 77.6, Notice **ARC 2908B** 10/29/03

Violations of the sale of cigarettes or tobacco products—penalties, 81.12(1), Notice **ARC 2907B** 10/29/03

TRANSPORTATION DEPARTMENT[761]

Iowa transportation map, adopt ch 28, Filed **ARC 2868B** 10/15/03
 Utility accommodation, ch 115, Filed **ARC 2837B** 10/15/03
 Signing on primary roads for county conservation parks, 131.8(1), Filed **ARC 2836B** 10/15/03
 Electronic information, 500.24, Filed **ARC 2866B** 10/15/03
 Motor carrier safety regulations,
 520.1(1)“a,” 520.5, 520.6, Filed **ARC 2867B** 10/15/03

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Capital infrastructure investments and cost of capital changes,
 7.4(6)“g,” 7.11(2), Notice **ARC 2883B** 10/15/03
 Small volume gas transportation service, 19.13(4)“e” and “f,”
 19.13(6), 19.14(5)“d,” Notice **ARC 2882B** 10/15/03

VETERANS AFFAIRS COMMISSION[801]

Iowa veterans home, 10.16(2)“b” to “d,” 10.19(1), 10.19(2)“b”(1), 10.35(3),
 10.36(2)“e,” 10.42(1), 10.42(3), Filed Emergency **ARC 2874B** 10/15/03

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Benefit payment control; public records and fair information practices, 25.1, 25.3(1),
 25.4(1), 25.4(3), 25.4(5), 25.5, 25.5(2) to 25.5(6), 25.6(4), 25.6(5), 25.6(7),
 25.7(1) to 25.7(4), 25.8(1)“c” and “d,” 25.9(2)“c”(2), 25.9(3)“f,” 25.9(4), 25.9(7),
 25.9(9), 25.10(1), 25.10(1)“b,” 25.10(2), 25.11(4), 25.12(2), 25.13(1), 25.13(2),
 25.13(3)“a” and “b,” 25.13(3)“b”(2), 25.13(3)“c,” “d” and “f,” 25.13(4)“b”(2) and (3),
 25.13(4)“c,” 25.16(4), 42.12(2)“j,” Filed **ARC 2880B** 10/15/03

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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DEAF SERVICES DIVISION[429]

General, amendments to chs 1 to 4 IAB 10/29/03 ARC 2890B	Second Floor Lucas State Office Bldg. Des Moines, Iowa	November 18, 2003 10 a.m.
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EDUCATIONAL EXAMINERS BOARD[282]

School psychologist Class A license; Class C special education license, 15.3(8), 15.4 IAB 10/15/03 ARC 2881B	Room 2 South Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 4, 2003 1 p.m.
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ELDER AFFAIRS DEPARTMENT[321]

Volunteer long-term care ombudsman program, 8.1 to 8.6 IAB 10/29/03 ARC 2904B	Director's Conference Room Clemens Bldg. 200 Tenth St. Des Moines, Iowa	November 19, 2003 9 to 11 a.m.
Resident advocate committees; role of area agencies on aging, amendments to ch 9 IAB 10/29/03 ARC 2905B	Director's Conference Room Clemens Bldg. 200 Tenth St. Des Moines, Iowa	November 19, 2003 9 to 11 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Financial assurance requirements for municipal solid waste landfills, 111.3 to 111.6, 111.8 IAB 10/15/03 ARC 2863B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 5, 2003 10 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Expansion of prior authorization requirements and implementation of preferred drug list, 78.1(2), 78.28(1) IAB 10/29/03 ARC 2906B (See also ARC 2789B , IAB 9/17/03)	First Floor Southeast Conference Room, Side One Hoover State Office Bldg. Des Moines, Iowa	November 24, 2003 9 to 10 a.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Registered amusement devices, 104.1, 104.3, 104.4, 104.6; adopt ch 105 IAB 10/29/03 ARC 2912B	Conference Room 311 Lucas State Office Bldg. Des Moines, Iowa	November 19, 2003 10 a.m.
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MANAGEMENT DEPARTMENT[541]

Local government innovation fund committee, ch 15 IAB 10/15/03 ARC 2872B	Room G14 State Capitol Bldg. Des Moines, Iowa	November 6, 2003 10 a.m.
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MEDICAL EXAMINERS BOARD[653]

Approval of resident training programs, 10.1, 10.3(1), 10.4(2), 10.5(2) IAB 10/15/03 ARC 2870B	Suite C 400 SW Eighth St. Des Moines, Iowa	November 4, 2003 3 p.m.
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NATURAL RESOURCE COMMISSION[571]

Resource enhancement and protection program—public communication component, 33.5(1), 33.22, 33.30, 33.40, 33.50 IAB 10/29/03 ARC 2911B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	November 19, 2003 10:30 a.m.
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PERSONNEL DEPARTMENT[581]

IPERS, 21.10, 21.11(9), 21.16(6), 21.22(1), 21.24, 21.30 IAB 10/15/03 ARC 2875B	7401 Register Dr. Des Moines, Iowa	November 4, 2003 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Behavioral science examiners, 30.4, 30.6, 31.5, 31.10, 31.13 to 31.15, ch 33, 34.1 IAB 10/15/03 ARC 2859B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 5, 2003 9 to 10 a.m.
Respiratory care examiners, 260.4, 260.6, 261.8, 261.11 to 261.13, ch 263, 264.1 IAB 10/15/03 ARC 2860B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 5, 2003 10 to 11 a.m.

UTILITIES DIVISION[199]

Second payment agreements, 19.4(10), 20.4(11) IAB 9/3/03 ARC 2724B	Hearing Room 350 Maple St. Des Moines, Iowa	November 6, 2003 10 a.m.
Eligible telecommunications carrier designation for wireless carriers, 39.2(5), 39.5 IAB 9/17/03 ARC 2773B	Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2003 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS’ AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Grow Iowa Values Board[264]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 2884B**COLLEGE STUDENT AID
COMMISSION[283]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 261.3, 261.37(5), and 261B.3A, the College Student Aid Commission proposes to amend Chapter 21, “Approval of Postsecondary Schools,” Iowa Administrative Code.

The proposed amendment requires that applicant schools meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)242-3341, by 4:30 p.m. on November 18, 2003.

This amendment is intended to implement Iowa Code section 261B.3A.

The following amendment is proposed.

Amend rule 283—21.1(78GA,SF2248) as follows:

283—21.1(78GA,SF2248) Approval criteria. The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education or its successor agency.
2. Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.
3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.
4. Are free of sanctions from the schools’ accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.
5. Enroll students who attend classes in Iowa and employ at least one full-time Iowa faculty member or program coordinator with graduate degrees, special training, experience, creative production or other accomplishments or distinctions that qualify them for their specific assignments.
6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.
7. Comply with the requirements of Iowa Code section 261.9(1)“e” to “h.”
8. File annual reports that the commission requires from all Iowa colleges and universities.
9. Have submitted a description of proposed program(s) to members of the Iowa coordinating council for post-high school education and have responded to any inquiries or concerns.

10. Meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.

This rule is intended to implement Iowa Code chapter 261B.

ARC 2890B**DEAF SERVICES DIVISION[429]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 216A.115, the Division of Deaf Services of the Department of Human Rights hereby gives Notice of Intended Action to amend Chapter 1, “Organization,” Chapter 2, “Services and Procedures,” Chapter 3, “Public Records and Fair Information Practices,” and Chapter 4, “Forms,” Iowa Administrative Code.

These proposed amendments are intended to eliminate outdated information and procedures. Adding the words “hard-of-hearing” after the word “deaf” will align the rules with the Division’s mission. The number of Commission members required to affirm a vote will be modified from four to three to allow the chair to abstain when only a quorum of four is present. The Division’s fees for interpreting services will be amended to prevent the state from competing with the private sector.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 18, 2003. Such written materials should be directed to the Administrator, Commission on the Deaf, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)242-6119.

Persons are also invited to present oral or written suggestions or comments at a public hearing which will be held on November 18, 2003, at 10 a.m. in the Division of Deaf Services, Department of Human Rights, Second Floor, Lucas State Office Building, Des Moines, Iowa 50319. At the hearing, persons will be asked to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requests for reasonable accommodations should contact the Commission on the Deaf in advance of the hearing and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 216A.

The following amendments are proposed.

ITEM 1. Amend rule 429—1.2(216A) as follows:

429—1.2(216A) Organization.

1.2(1) Location *Central office.* The division of deaf services consists of a central office and three regional offices. Hours of operation for regional offices the central office are 8:30 a.m. to 4:30 5:00 p.m., Monday through Friday.

a. The central office is located in the Department of Human Rights, First Second Floor, Lucas State Office Building, Des Moines, Iowa 50319-0090. The telephone number is (515)281-3164, voice and TTY.

b. Reserved.

c. The Council Bluffs regional office is located in the City of Council Bluffs Health Department, City Hall, Lower

DEAF SERVICES DIVISION[429](cont'd)

Level, 209 Pearl Street, Council Bluffs, Iowa 51503. The telephone number is (712)328-3195, voice and TTY.

d. ~~Reserved.~~

e. ~~The Davenport regional office is located in the Community Resource Center, Inc., 605 North Main Street, Suite #221, Davenport, Iowa 52803. The telephone number is (319)322-0255, voice and TTY.~~

f. ~~The Fort Dodge regional office is located at the Warden Plaza, 920 1st Avenue South, Suite A, Fort Dodge, Iowa 50501. The telephone number is (515)955-2539, voice and TTY.~~

1.2(2) Method of contacting the division of deaf services. Citizens may contact the division of deaf services central or regional offices ~~office~~ by telephone, mail, fax, E-mail, or personal visits for any of the services provided unless otherwise stated under the specific service.

a. and b. No change.

1.2(3) Composition of staff.

a. No change.

b. Interpreters. The interpreters provide sign language and oral interpreting services. Pursuant to Iowa Code chapter 622B, Supreme Court Rules on Qualifications and Compensation of Interpreters, dated May 1981, and Iowa Code section 804.31, the division of deaf services interpreters shall hold a Comprehensive Skills Certificate (CSC) or a Certificate of Interpretation (CI) and Certificate of Transliteration (CT) from the Registry of Interpreters for the Deaf, Inc. Applicants that are hired as staff interpreters who do not possess a CSC or CI and CT shall attain this level of certification within six months of hire as a condition of employment. The interpreters plan, coordinate, and schedule requests to provide direct and contractual/referral interpreting services and coordinate contractual/referral interpreting requests when appropriate. The interpreters document services provided for statistical purposes, maintain cooperative working relationships with clients served, and perform related work as required. Advocacy issues or issues requiring assistance will be referred to the consultant consultants or administrator.

c. ~~Consultant Consultants.~~ The consultant provides consultants provide technical services related to deafness in the areas of housing, transportation, recreation, physical access and employment practices. The consultant is also responsible for coordinating statewide interpreting services as needed, and performing related work. The consultant acts consultants act as a liaison liaisons with elected officials, governmental agencies, human resource professionals, and local groups in order to clarify the program needs of deaf and hard-of-hearing persons and to establish and maintain the plans and programs dealing with deaf and hard-of-hearing persons and their disabilities. The consultant coordinates interpreting services on a statewide basis in order to meet the communication needs of the deaf requiring expert interpreting and translating skills to available resources, and maintains a roster of interpreters and statistics regarding delivery of interpreting services. The consultant analyzes and reports consultants report on data obtained on programs, issues, and services relating to the deaf and hard-of-hearing. The consultant consultants shall be fluent in American Sign Language.

d. No change.

e. Program planners. The program planners conduct research and prepare reports, articles, news releases, and publications on demographic, economic, cultural, and social issues affecting deaf and hard-of-hearing people. The program planners reply to public requests for information on issues affecting deaf and hard-of-hearing people and develop and maintain the agency's information resource program.

The program planners develop public information programs to increase public interest and understanding of issues affecting deaf and hard-of-hearing people. The program planners analyze the social impact of services and lack of services for deaf and hard-of-hearing people and prepare recommendations and guidelines on service needs. The program planners identify funding sources for program development and are responsible for applying for grants. The program planners work cooperatively with the public and private sectors to establish programs to fill service gaps and implement ongoing evaluations of successes and failures.

ITEM 2. Amend paragraph 1.3(2)“a” as follows:

a. When a quorum is present, a position is carried by an affirmative vote of a majority of the entire membership of the commission number of commissioners present.

ITEM 3. Amend subrule 1.3(4) as follows:

1.3(4) Duties of the commission. The commission shall:

a. Inform communities and interested persons of the needs of the deaf and hard-of-hearing and how their needs may be met through the use of service providers.

b. Obtain, without additional cost to the state, available office space in public and private agencies which service providers may utilize in carrying out service projects for deaf persons *Reserved*.

c. Establish service projects for deaf and hard-of-hearing persons throughout the state. Service providers shall not undertake for compensation projects which would duplicate existing services when those services are available to deaf and hard-of-hearing people through paid interpreters or other persons able to communicate with deaf and hard-of-hearing people. As used in this section these rules,

“Service project” includes interpretation services for persons who are deaf and hard-of-hearing and referral services for deaf and hard-of-hearing people in the areas of adult education, legal aid, employment, medical, finance, housing, recreation, and other personal assistance and social programs.

“Service providers” are persons who, for compensation, carry out service projects.

d. Identify agencies, both public and private, which provide community services, evaluate the extent to which they make services available to deaf and hard-of-hearing people, and cooperate with the agencies in coordinating and extending these services.

e. Collect information concerning deafness and provide for dissemination of the information.

f. Provide for mutual exchange of ideas and information on services for deaf and hard-of-hearing people between federal, state, and local governments, private organizations and individuals.

g. Pursuant to Iowa Code section 216A.2, be responsible for budgeting and personnel decisions for the commission and the division.

ITEM 4. Amend paragraph 1.3(5)“c” as follows:

c. Public information. Strive to ensure public awareness and encourage constructive use of the services by those who need them. Plan workshops, open houses, and other awareness-promoting activities. Establish and maintain relationships with other agencies serving the deaf and hard-of-hearing. Develop specific measures to increase visibility throughout the state.

ITEM 5. Amend rule 429—2.1(216A), definitions of “oral interpreter” and “portal-to-portal,” as follows:

DEAF SERVICES DIVISION[429](cont'd)

"Oral interpreter" means an interpreter who is fluent in transliterating, paraphrasing and voicing. :

1. *Facilitating spoken communication for individuals who are deaf or hard-of-hearing and use speech and speech-reading as their primary mode of communication.*

2. *"Voicing" for speakers who use no voice or whose voices are difficult to understand.*

~~"Portal-to-portal" means the span of time when interpreters leave their domicile/office to interpret at a scheduled interpreting assignment to interpret, and return to their domicile/office or arrive at their next interpreting assignment.~~

ITEM 6. Rescind and reserve subrule **2.3(1)**, paragraphs "c" and "d."

ITEM 7. Amend subrules 2.3(2) to 2.3(5) as follows:

2.3(2) Contractual interpreting services. The division of deaf services provides contractual interpreting services by using interpreters in private practice who have entered into a contractual *an* agreement with the agency. Contractual interpreting funding will not be used when any party is willing or obligated by state or federal law to pay for interpreting services.

a. Persons may request contractual interpreting services when the staff interpreter is not available or when the interpreting service requested occurs beyond regular hours of operation.

b. ~~The division of deaf services will attempt to arrange services when a staff interpreter is unavailable or when the request for service goes beyond regular hours of operation~~ *Reserved.*

c. The division of deaf services will maintain a listing of contractual interpreters and update the listing annually. *Persons requesting contractual interpreting services will be asked to choose an interpreter from this list to provide services.*

d. General terms and conditions are listed on the individual contracts *agreements*. Detailed procedures for contractual interpreting services are specified in the contractual interpreting manual printed for interpreters in private practice who contract their services through the division.

e. ~~Interpreters in private practice may enter into a contract with the division of deaf services by contacting the agency and filling out an interpreter update form and signing a contract upon which they are in agreement.~~

f. ~~Exception to any condition stated in the contract is to be at the discretion of the commission on the deaf. A written request for consideration of an exception must be directed to the administrator.~~

2.3(3) Referral interpreting services. The division of deaf services *maintains a roster of interpreters and* provides an interpreter referral service to persons needing an interpreter when the staff interpreter is not available or when the request goes beyond regular hours of operation.

a. ~~The division of deaf services will attempt to secure interpreting services where state or federal laws mandate compensation for services or when any party is willing to provide for compensation of services~~ *Reserved.*

b. Interpreters in private practice may contact the agency to request an interpreter update form *a sign language interpreter release of information form*. Upon completion and return of this form, the interpreter's name will be added to the listing.

c. Staff interpreters are permitted to function on a private basis, beyond regular hours of operation, provided there is no conflict with employment services.

2.3(4) Assistance. The division of deaf services will provide assistance and advocacy in order to meet the service needs of deaf *and hard-of-hearing* citizens by providing individual clients with specific information, resources, options, and assistance pertaining to their difficulties. The objective is to achieve results desired by the clients. Under no circumstances, however, should the agency, in the absence of qualified personnel, engage in counseling or therapy of any kind.

2.3(5) Consultation. A citizen may consult with the division of deaf services ~~consultant consultants~~ about various ways the citizen may obtain needed services. ~~The consultant Consultants~~ will provide information on federal, state, and local programs and organizations, both public and private, which are available to assist deaf *and hard-of-hearing* persons.

ITEM 8. Amend paragraph **2.3(6)"c"** as follows:

c. The division provides, upon request, information of a general nature on various programs, services, devices, laws, or any information which may be of interest or impact the lives and social welfare of deaf *and hard-of-hearing* people on the local, state, ~~or~~ *and* federal levels.

ITEM 9. Amend subrule 2.3(7) as follows:

2.3(7) Library ~~on deafness~~. Persons may borrow library materials from the division of deaf services' library located at the central office. The division maintains and distributes a bibliography of deafness-related materials which is held in its library and which is available upon request.

a. ~~The library on deafness~~ operates during regular hours of operation.

b. To request materials, a person may contact the division of deaf services by telephone, ~~in writing, mail, fax, E-mail,~~ or personal visit.

c. to h. No change.

i. Persons not returning materials to the library on or before the date due will be assessed a fine of \$.05 per day, per item, not to exceed a total of \$4.00 per item. The exception will be videocassette tapes which will be assessed at \$.25 per day, per item, not to exceed a total of \$4.00 per tape. A day of grace will be given if a return date falls on a holiday. No other materials may be borrowed until all outstanding fines are paid. *After 45 days the division shall implement collection procedures.*

ITEM 10. Rescind and reserve subrule **2.3(8)**.

ITEM 11. Rescind paragraph **2.4(2)"c."**

ITEM 12. Amend subrule 2.4(3) as follows:

2.4(3) Fee schedule.

a. ~~The fee schedule for service is based on a portal-to-portal basis. Consideration is given to the setting type and the amount of time services are provided time spent traveling, waiting, and interpreting.~~

b. The fee schedule for division staff is:

Legal Setting	\$30/hour
Mental Health Setting	\$20/hour
Health Setting	\$20/hour
Community Service Setting	\$20/hour
Consumer Service Setting	\$20/hour
Personal Matter Setting	\$20/hour
Employment Setting	\$20/hour
Education Setting	\$20/hour
Base Fee (covering up to one hour of service)	\$40
Hourly Fee (assessed for time beyond Base Fee)	\$30/hour

DEAF SERVICES DIVISION[429](cont'd)

c. Fees shall be calculated ~~on a portal-to-portal basis with a one-hour minimum for assignments that run less than one hour in length for time spent traveling, waiting, and interpreting.~~

d. Reserved.

e. ~~The division will provide coordination of interpreting services and fees shall be calculated for actual number of hours which exceed three hours in length according to the category and fee scale listed under 2.4(3).~~

ITEM 13. Amend paragraph **3.14(2)“e”** as follows:

e. Information necessary to coordinate contractual or referral interpreting services shall be provided to free-lance interpreters in private practice. The information provided will be the names of the parties involved, location, date and time of assignment, billing source, and the setting.

ITEM 14. Amend subrules 4.1(9) to 4.1(11) as follows:

4.1(9) Library information card. This standard information card establishes eligibility to borrow materials from the library on deafness.

4.1(10) Check-out card. This form is used to record loaned materials from the library on deafness and is used to follow up on delinquent materials and for statistical purposes.

4.1(11) ~~Interpreter update~~ *Sign language interpreter release of information* form. This form is required to be filled out by interpreters in private practice ~~in serving on referral or contractual listings for the division to be listed on the division's public list of interpreters.~~ Information requested relates to an individual's background, experience, certification, and education in the interpreting field, along with times of availability, counties served, and personal data. These forms are confidential although listings derived from these forms are made public to those consumers requesting the listings.

ITEM 15. Rescind and reserve subrules **4.1(12)** and **4.1(13)**.

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ELDER AFFAIRS
DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 231.14 and 231.23, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 8, “Long-Term Care Resident’s Advocate/Ombudsman,” Iowa Administrative Code.

This amendment establishes a Volunteer Long-Term Care Ombudsman program that provides a corps of volunteers who receive intensive training and orientation and are certified by the State Long-Term Care Ombudsman.

Volunteer Long-Term Care Ombudsmen in cooperation with the Office of the State Long-Term Care Resident’s Advocate/Ombudsman and resident advocate committees will work together to give residents of long-term care facilities and their family members access to a variety of ways to

resolve concerns. The programs complement each other by offering complaint resolution at multiple levels.

Any interested person may make written suggestions or comments on this proposed amendment prior to November 19, 2003. Such written comments should be directed to the Department of Elder Affairs, 200 Tenth Street, Des Moines, Iowa 50309; E-mailed to Jeanne.Yordi@iowa.gov; or faxed to (515)242-3300.

There will be a public hearing on November 19, 2003, from 9 to 11 a.m. in the Director’s Conference Room at the Department of Elder Affairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department and advise of specific needs.

This amendment is intended to implement Iowa Code chapters 17A, 22, and 231.

The following amendment is proposed.

Amend **321—Chapter 8** as follows:

CHAPTER 8
LONG-TERM CARE RESIDENT’S
ADVOCATE/OMBUDSMAN**321—8.1(231) Definitions.**

“Designee” means an employee who is designated as a regional long-term care ombudsman.

“Long-term care facility” means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“Resident advocate committee member” means a volunteer appointed by the director or the director’s designee pursuant to Iowa Code section 135C.25.

“Resident’s advocate/ombudsman” means the state long-term care ombudsman.

“Volunteer long-term care ombudsman” means a volunteer who has successfully completed all requirements and has received certification from the resident’s advocate/ombudsman.

321—8.1 321—8.2(231) Purpose.

8.1(1) 8.2(1) General rule. The department shall operate a statewide long-term care resident’s advocate/ombudsman program in cooperation with appropriate state and local agencies such as the office of the citizen’s aide/ombudsman, the Iowa department of public health, the department of inspections and appeals, the Iowa department of human services, and the AAAs.

8.1(2) 8.2(2) ~~Care review~~ *Resident advocate committee and volunteer long-term care ombudsman* program administration. The program shall include the administration of the ~~care review~~ *resident advocate committee* program identified in Iowa Code section 231.4 and the *volunteer long-term care ombudsman program identified in Section 712(5) of the Older Americans Act.*

321—8.2 321—8.3(231) Long-term care resident’s advocate/ombudsman duties.

8.2(1) 8.3(1) Program administration. The department shall employ an individual (hereinafter called the resident’s advocate/ombudsman) to administer the long-term care resi-

ELDER AFFAIRS DEPARTMENT[321](cont'd)

dent's advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 231.

8.2(2) 8.3(2) Duties of the resident's advocate/ombudsman (*also known as the state long-term care ombudsman*). ~~The~~ *In accordance with the Older Americans Act, the* resident's advocate/ombudsman shall perform the following duties:

a. ~~Investigate~~ *Identify, investigate* and resolve complaints and grievances that *are made by, or on behalf of, residents that* may adversely affect the health, safety, welfare or rights of residents;

b. Administer the ~~care review~~ *resident advocate* committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;

c. Monitor the development and implementation of federal, state and local laws, *rules*, regulations and policies that relate to long-term care facilities;

d. Provide information to the public and to state and local agencies about problems of persons in long-term care facilities;

e. ~~Train long-term care facility staff in conjunction with training provided to care review committee members;~~

e. *Administer the volunteer long-term care ombudsman program;*

f. Assist in the development of organizations to participate in the long-term care resident's advocate/ombudsman program; and

g. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities; ;

h. *Designate regional long-term care ombudsmen (hereinafter called designee) to perform any of the above duties; and*

i. *Approve certification for volunteer long-term care ombudsmen.*

321—8.3 321—8.4(231) Access requirements. The resident's advocate/ombudsman *or designee* shall have access to long-term care facilities, private access to residents, access to personal and medical records of residents and access to other records maintained by the facilities or governmental agencies or their agents, pertaining to the complaint(s) being investigated.

8.3(1) 8.4(1) Visits to facilities. The resident's advocate/ombudsman *or designee* may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident's advocate/ombudsman's *or designee's* presence, the resident's advocate/ombudsman *or designee* may communicate privately and without restriction with any resident who consents to the communication.

8.3(2) 8.4(2) Visits to resident's living area. The resident's advocate/ombudsman *or designee* shall not observe the private living area of any resident who objects to the observation.

8.3(3) 8.4(3) Restrictions on visits. The facility staff member in charge may refuse or terminate a resident's advocate/ombudsman's *or designee's* visit with a resident only when written documentation is provided to the resident's advocate/ombudsman *or designee* that the visit is a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

8.3(4) 8.4(4) Request agency assistance.

a. The resident's advocate/ombudsman *or designee* may request cooperation, assistance and data that will enable the resident's advocate/ombudsman *or designee* to execute any

of the resident's advocate/ombudsman's *or designee's* duties and powers under the Older Americans Act from any governmental agency or its agent or AAA.

b. *Only the state long-term care ombudsman shall have access to adult abuse case information.*

8.3(5) ~~Copies of medical and personal records.~~ All medical and personal records maintained by a facility shall be confidential and shall not be available for copying by the resident's advocate/ombudsman except under the following circumstances:

a. ~~The information is requested by the resident's advocate/ombudsman who provides the facility with a written waiver signed by the person about whom the information is sought, the person's guardian, conservator, legal representative or responsible party, as defined under rule 470—58.1(135C), Iowa Administrative Code. Each signed consent shall designate specifically the person or agency to whom the information is to be provided, and the information shall be provided only to that person or agency; or~~

b. ~~The information is sought by a court order.~~

8.4(5) *Facility records.* The resident's advocate/ombudsman *or designee* may review any resident's medical or personal records maintained by the facility or any other records of a long-term care facility or of any governmental agency that pertain to the care of residents if the resident's advocate/ombudsman *or designee* considers it necessary for the resolution of a complaint.

a. *Copies of a resident's medical or personal records maintained by the facility, or other records of a long-term care facility, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident.*

b. *All medical and personal records shall be made available to a volunteer long-term care ombudsman for review if:*

(1) *The volunteer long-term care ombudsman has the permission of the resident, the legal representative of the resident or the responsible party; or*

(2) *Access to the records is necessary to investigate a complaint; and*

(3) *The volunteer long-term care ombudsman obtains approval of the resident's advocate/ombudsman or designee; or*

(4) *The information is sought by court order.*

c. *The resident's advocate/ombudsman program shall keep all records and information confidential according to the Older Americans Act.*

8.3(6) ~~Records needed to resolve complaints.~~ Except as limited by subrule 8.3(5), the resident's advocate/ombudsman may review and copy any files or other records of a long-term care facility, or of any government agency pertaining to the care of residents that may be considered necessary to the resident's advocate/ombudsman for the resolution of a complaint.

321—8.4 321—8.5(231) Authority and responsibilities of the department.

8.4(1) 8.5(1) Confidentiality and disclosure. The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

a. ~~The resident's advocate/ombudsman~~ *No member of the resident's advocate/ombudsman program shall not* disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

sure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

8.4(2) 8.5(2) Referral of complaints or grievances.

a. When the resident's advocate/ombudsman or designee encounters facts which may indicate the failure to comply with state or federal laws, rules or regulations, the resident's advocate/ombudsman or designee shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman or designee encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman or designee shall refer the case appropriately for administrative and legal assistance.

c. When the resident's advocate/ombudsman or designee encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman or designee shall initiate follow-up activities on all referred complaints and grievances.

8.4(3) 8.5(3) Reporting. The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances ~~in~~ regarding long-term care facilities in accordance with requirements of the Act and Iowa Code section ~~231.4~~ 231.42.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, ~~and care review resident advocate committees and the volunteer long-term care ombudsman program~~ shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of the affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident's advocate/ombudsman and the department of inspections and appeals. ~~resident or complainant or pursuant to 321—9.15(231).~~

d. No change.

e. The resident's advocate/ombudsman program shall prepare an annual report analyzing the complaint and statistics collected and provide this report, by January 15 of each year, to the following agencies and others as deemed appropriate, including but not limited to: AOA, the offices of the governor, the general assembly of Iowa, the Iowa department of inspections and appeals, the Iowa department of human services, and AAAs.

321—8.6(231) Volunteer long-term care ombudsman program.

8.6(1) Application. Any individual may apply to the resident's advocate/ombudsman program to become a volunteer long-term care ombudsman. A resident advocate committee member shall be given priority in the selection process and may become a certified volunteer long-term care ombuds-

man pending successful completion of the required training and background checks.

a. **Application forms.** Application forms may be obtained from the resident's advocate/ombudsman program at the department of elder affairs address listed in rule 321—2.1(231) or from other organizations designated by the department.

b. **Submission of forms.** Each applicant shall complete an application and submit it to the department address listed in rule 321—2.1(231).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the volunteer long-term care ombudsman program must not have a conflict of interest or have had a conflict of interest within the past two years in accordance with the Older Americans Act. A conflict of interest shall be defined as:

(1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;

(2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;

(3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;

(4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

(5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;

(6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;

(7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care resident's advocate/ombudsman for the performance of an act in the regular course of long-term care;

(8) Provision of services while employed in a position with duties that conflict with the duties of a volunteer long-term care ombudsman;

(9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or

(10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

b. Immediate family shall be defined as father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-parent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

8.6(3) Applicants shall not be accepted into the program if:

a. It is determined that the applicant has a conflict of interest as listed in subrule 8.6(2); or

b. The applicant has unfavorable references, which shall include a criminal background check and abuse check.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the resident's advocate/ombudsman. Successful completion

ELDER AFFAIRS DEPARTMENT[321](cont'd)

shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 24 hours of approved training, which shall include, but not be limited to:

- a. History and overview of resident's advocate/ombudsman program;
- b. Terminology;
- c. Resident rights;
- d. State and federal law, rules and regulations regarding long-term care facilities;
- e. Regulatory process in long-term care facilities;
- f. Aging process, common medical conditions and terminology;
- g. Life in a long-term care facility and culture change;
- h. Communication skills;
- i. Confidentiality;
- j. Problem solving and documentation, and follow-up of complaints;
- k. Dynamics of abuse and neglect;
- l. Ethics; and
- m. Resources for volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a volunteer long-term care ombudsman shall be made by the resident's advocate/ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The resident's advocate/ombudsman has the right to require that the applicant receive additional personal training prior to certification and has the right to deny certification to applicants not meeting the above training criteria.

8.6(6) Certification.

a. Notification. Volunteer long-term care ombudsmen shall be notified in writing within 14 days following the conclusion of the training program if certification has been continued or revoked.

b. Certification shall initially be for one year, with recertification available following the volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the residents of the facility, the facility administrator and staff, and the resident's advocate/ombudsman or a representative from the office of the state long-term care resident's advocate/ombudsman program.

c. After the volunteer's successful completion of one year as a volunteer long-term care ombudsman, the resident's advocate/ombudsman may recertify the volunteer for a two-year period.

8.6(7) Continuing education.

a. All certified volunteer long-term care ombudsmen shall complete a minimum of ten hours of continuing education the first year and a minimum of six hours of continuing education each year thereafter. Continuing education may include, but is not limited to:

- (1) Scheduled telephone conference calls with representatives from the office of the state long-term care resident's advocate/ombudsman program;
- (2) Governor's conference on aging;
- (3) Area Alzheimer's disease conferences;
- (4) Elder abuse conferences;
- (5) Courses related to aging conducted by a local community college or university or via the Internet;
- (6) Other events as approved in advance by the resident's advocate/ombudsman.

b. Volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the resident's advocate/ombudsman or designee within 30 days following the completion of the continuing education event.

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a volunteer shall do so in writing to the resident's advocate/ombudsman. The final determination shall be made by the resident's advocate/ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. Reasons for revocation. A volunteer long-term care ombudsman's certification may be revoked by the resident's advocate/ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a volunteer long-term care ombudsman without proper certification, attending less than the required continuing education training, voluntary termination, unprofessional conduct, failure to carry out the duties as assigned, or actions which are found by the resident's advocate/ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The resident's advocate/ombudsman shall notify the volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the resident's advocate/ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The resident's advocate/ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.6(10) Access.

a. Visits to facilities. A volunteer long-term care ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the volunteer long-term care ombudsman's presence, the volunteer long-term care ombudsman may communicate privately and without restriction with any resident who consents to the communication.

b. Visits to resident's living area. The volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

c. Restrictions on visits. The facility staff member in charge may refuse or terminate a volunteer long-term care ombudsman visit with a resident only when written documentation is provided to the volunteer long-term care ombudsman that the visits are a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

8.6(11) Duties. The volunteer long-term care ombudsman shall assist the resident's advocate/ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a volunteer long-term care ombudsman shall include:

a. Conducting initial inquiries regarding complaints registered with the long-term care resident's advocate/ombudsman;

b. At the request of the resident's advocate/ombudsman or designee, providing follow-up visits on cases investigated by the resident's advocate/ombudsman or designee;

c. Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;

ELDER AFFAIRS DEPARTMENT[321](cont'd)

d. At the request of the resident's advocate/ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;

e. Tracking, monitoring and following up on publicly available information regarding facility performance;

f. Identifying concerns in a facility. Concerns identified should be discussed with the chair of the resident advocate committee to determine an appropriate course of action to reach resolution;

g. Completing all reports and submitting them to the resident's advocate/ombudsman in a timely manner; and

h. Completing exit interviews when the volunteer ombudsman resigns.

These rules are intended to implement Iowa Code chapter 231.

ARC 2905B**ELDER AFFAIRS
DEPARTMENT[321]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 231.14 and 231.23, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 9, “Resident Advocate Committees,” Iowa Administrative Code.

These amendments remove the requirement that physicians provide medical information to Resident Advocate Committee volunteers. Release of such information is now prohibited under federal Health Insurance Portability and Accountability Act (HIPAA) regulations. Additionally, the amendments increase the time frames within which Resident Advocates can resolve or refer a complaint. Further, changes are proposed which would remove the requirement that Area Agencies on Aging recruit, train, and provide technical assistance to Resident Advocate Committees in the Agencies’ Program and Service Areas.

Any interested person may make written suggestions or comments on these proposed amendments prior to November 19, 2003. Such written comments should be directed to the Department of Elder Affairs, 200 Tenth Street, Des Moines, Iowa 50309, E-mail to debi.meyers@iowa.gov, or fax (515)242-3300.

There will be a public hearing on November 19, 2003, from 9 to 11 a.m. in the Director’s Conference Room at the Department of Elder Affairs, Clemens Building, 200 Tenth Street, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Elder Affairs Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 17A, 22, and 231.

The following amendments are proposed.

ITEM 1. Amend subrule 9.1(2) as follows:

9.1(2) Committee membership. The committee shall consist of at least ~~two members~~ *one member* or a number sufficient to ~~maintain a ratio of at least 1 member to 15 residents~~ *meet the needs of the residents*. ~~The ratio shall be waived by the department if the committee demonstrates the ability to carry out the functions outlined in these rules with fewer members.~~

ITEM 2. Amend subrule 9.2(4) as follows:

9.2(4) Waiver of membership restriction. The waiver of membership restriction for relatives in subrule 9.2(3) may be reviewed and approved by the executive director and granted, if it can be documented to the department that efforts have been made individually or jointly by the resident advocate committee, ~~AAA~~, or the department to contact and recruit alternative applicants.

ITEM 3. Amend subrule 9.3(1) as follows:

9.3(1) Notification. Members of the resident advocate committee shall be appointed from individuals whose applications for membership have been accepted according to this rule. Appointments shall be made by letter within 45 days of receipt of applications by the executive director or designee. Appropriate ~~AAAs~~ and facilities shall be notified of the appointments.

ITEM 4. Amend subrule 9.4(3) as follows:

9.4(3) Notification of cancellation. The executive director shall notify, in writing, the remaining committee members, ~~the appropriate AAA~~, and the facility of the cancellation of resident advocate committee members’ appointments.

ITEM 5. Amend subrule **9.6(2)**, paragraph “c,” as follows:

c. The secretary shall complete a report on the committee meeting on the report form designated by the department. Copies of the report shall be submitted to the administrator and ~~to the resident advocate coordinator if the facility is a nursing facility or residential care facility. Copies of each report shall be sent by the coordinator to the office of long-term care resident advocate/ombudsman.~~

ITEM 6. Amend subrule 9.8(2) as follows:

9.8(2) Assistance to the committee. The committee may request information, advice and counsel from the facility administrator, medical or health professionals or specialists, ~~AAAs~~, the department or from other state and local agencies.

a. ~~The physician’s certification of care shall be made available to the committee by the administrator of the facility.~~

b. ~~Physicians who have patients residing in the facility shall have the responsibility of assisting the committee upon request.~~

e. Upon contacting anyone on behalf of residents in the performance of duties, the resident advocate committee member shall clearly be identified as a resident advocate committee member who is a volunteer advocate and shall clearly state the purpose and justification for this contact.

ITEM 7. Amend subrule 9.10(1) as follows:

9.10(1) Resident reviews. To evaluate the degree of satisfaction that residents have with the quality of life experienced in the facility in which they reside, ~~the following procedures shall be used:~~

ELDER AFFAIRS DEPARTMENT[321](cont'd)

a.—Resident *resident* reviews shall be recorded, including responses to questions asked of residents or their representatives.

b.—The committee shall establish a schedule for at least one private interview annually with each resident in the facility.

ITEM 8. Rescind and reserve subrule **9.11(2)**, paragraph “b.”

ITEM 9. Rescind rules 321—9.13(231) and 9.14(231) as follows:

321—9.13(231) Role of the AAAs. AAAs shall carry out the following activities in support of the ombudsman program in nursing facilities and residential care facilities:

1.—Advise the ombudsman program on the training needs of resident advocate committees in the planning and service area of the area agency;

2.—Assist the ombudsman program in training and coordinating the training of resident advocate committee members;

3.—Distribute department-provided forms if requested by resident advocate committees;

4.—Assist resident advocate committees to obtain legal and other technical assistance;

5.—Recruit applicants for membership on resident advocate committees; and

6.—Assist in the resolution of complaints or grievances being investigated by resident advocate committees or the ombudsman program as requested.

321—9.14(231) Approval of training for committees in nursing facilities and residential care facilities.

9.14(1) Potential provider requirements. The provider of proposed training shall submit the training agenda, facility, and objectives to the ombudsman program for approval 30 days prior to the date of the proposed training.

9.14(2) Time for approval or disapproval. The ombudsman program shall approve or disapprove the proposal and notify the provider of the proposed training within ten working days of receipt of the proposal.

9.14(3) Provider reports. Upon completion of the resident advocate committee training, the provider of the training shall submit a list of the name and address of each resident advocate committee member trained and the name and address of the long-term care facility at which each trained member serves, to the resident advocate coordinator within ten days following completion of the training course. The ombudsman shall audit records at least once per year or as needed.

ARC 2901B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.22, 22.11, and 217.6, and 441—subrule 3.10(2), the Department

of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” Chapter 9, “Public Records and Fair Information Practices,” Chapter 13, “Program Evaluation,” Chapter 28, “Policies for All Institutions,” Chapter 75, “Conditions of Eligibility,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

These amendments update Department rules on confidentiality of records. The amendments add new policy needed to comply with federal law (Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996) and federal regulations (45 CFR Parts 160 and 164 as amended to August 14, 2002) relating to standards to protect the privacy of protected health information. Chapter 9 is revised to implement applicable HIPAA federal regulations. References in other chapters are revised to conform to the Chapter 9 revisions.

The Department has designated itself as a “hybrid entity” for purposes of HIPAA compliance. Within the Department, HIPAA applies only to the Medicaid program, the HAWK-I program, and the facilities defined in rule 441—9.1(17A,22). Activities related to determining eligibility for Medicaid, paying Medicaid claims, and health care operations in the Department’s facilities are examples of HIPAA-covered activities in the Department.

These amendments establish requirements relating to the uses and disclosures of protected health information, the rights of clients with respect to their protected health information, and the procedures for exercising those rights. Federal HIPAA regulations define the type of records that constitute “protected health information.” In general, protected health information identifies a person in some way and contains information about that person’s past, present, or future medical condition, treatment, or payment for that treatment.

These amendments provide that the Department may not use or disclose protected health information without a written authorization from the subject of the record except:

- For the administration of covered Department programs, defined in HIPAA terminology as “treatment, payment, or health care operations.”
- As required by state law or by federal laws or regulations.

Federal regulations would permit the Department to use or disclose protected health information without a written authorization for public health activities, health oversight activities, judicial and administrative proceedings, law enforcement purposes, specialized government functions, research, and in the case of a serious threat to health or safety if certain conditions are met. Since Iowa’s state law and federal Medicaid regulations at 42 CFR 431.300 are generally more restrictive than the HIPAA regulations, in practical terms the Department may use and disclose protected health information for the two purposes listed above.

The Department must have a written authorization from the subject for any use of psychotherapy notes except for use by the originator of the notes for treatment, in certain supervised training programs, and when necessary to defend itself in a legal action brought by the subject.

Only those parts of the Department that are subject to HIPAA requirements may access protected health information without an authorization form. The Department must make reasonable efforts to limit use and disclosure of protected health information to the minimum necessary for staff to accomplish their duties.

The Department may disclose protected health information to the subject or the subject’s personal representative if a request is made in accordance with Department policy. “Personal representative” is a term defined in HIPAA regulations.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The HIPAA regulations place significant additional responsibilities on the Department. The Department is required to:

- Designate a person to be responsible for seeing that the privacy procedures are adopted and followed. The Department has established a privacy office, with a designated privacy official. The HIPAA Privacy Office is responsible for ensuring compliance with HIPAA regulations, responding to complaints and questions about privacy of protected health information, and handling any request for restriction, confidential communication, access, amendment, or accounting of protected health information. Centralized responsibility will help ensure consistency in the application of policies and procedures.

- Provide notice by April 2003 to all affected clients regarding the types of uses and disclosures of protected health information that may be made by the Department, and of the client's rights and the Department's legal duties with respect to protected health information. These amendments follow the federal guidelines, which require notice to be provided to affected new applicants, within 60 days to all affected clients if the notice is revised, and once every three years. The Department must also notify its affected clients of the availability of the notice and how to obtain it.

These amendments require that the notice be mailed to a household or eligible group, rather than to each client, in order to conserve costs related to printing and postage. HIPAA regulations do allow the Department to mail the notice electronically, rather than on paper, if the client agrees. However, these amendments do not provide clients with this option because the Department does not currently have the capability of maintaining an electronic file of those clients who want to receive the electronic rather than the paper version. Thus, the Department will mail the notice by U.S. mail. Nevertheless, the privacy officer will send the privacy notice by E-mail upon a client's request.

- Train affected staff on the privacy policies and procedures by April 2003 and train affected new staff as they are hired.

- Establish a process for clients to file complaints concerning the Department's policies and procedures and its compliance with them.

- Develop policies to ensure that only the minimum necessary information is used or disclosed.

- Identify staff who need access to protected health information to carry out their job duties, what information they need, and the conditions for gaining access to the information.

- Review all contracts with business associates with whom protected health information is shared to ensure the contracts are HIPAA-compliant.

These amendments implement HIPAA regulations giving Department clients the following rights regarding the protected health information in Department records:

- The right to inspect and copy protected health information. This right does not apply to psychotherapy notes, information gathered to prepare for civil, criminal or administrative actions or proceedings, and when the law does not permit the release. The client may be charged a fee for the cost of copying the records.

The regulations contain a list of reasons that the Department may use to deny access, at state option. If the Department denies access because a licensed health care professional has health or safety concerns about granting access, HIPAA regulations require that the client has the right to request a second-level review by another licensed health

professional. The Department is not required to offer this second-level review for other reasons for denial of access. Due to budgetary and logistical concerns, the Department will not provide second-level reviews by a licensed health care professional except when required by the federal regulations.

- The right to revoke written authorization permitting disclosure of protected health information.

- The right to amend protected health information when the client believes the information is incorrect. These amendments adopt federal requirements and options. These amendments require the client to make a request for amendment in writing on the form specified in the rules. The Department will consider an appeal request as a statement of disagreement and the appeal decision as the rebuttal statement.

- The right to request confidential communications. The Department will accommodate any reasonable request by a client to have protected health information communicated to the client by alternative means or at alternative locations. Department health plans need to agree to a confidential communication only if necessary to protect the client from endangerment.

- The right to request restrictions on uses and disclosures. The amendments do not limit the circumstances under which a request can be made. The Department will approve a request for restriction when use or disclosure otherwise would endanger the client.

- The right to a list or "accounting" of disclosures made on or after April 14, 2003. The Department is not required to include on the list disclosures based on a client's authorization; disclosures for treatment, payment, or health care operations; releases for national security purposes; and disclosures to correctional institutions or to other law enforcement custodial situations. All other requests must be acted upon within the time limits set out in federal regulations.

Requests to exercise these privacy rights must be in writing. HIPAA regulations allow the Department to charge a reasonable, cost-based fee:

- For copying and postage when the client requests a copy of protected health information.

- For costs of preparation when the client agrees in advance to a summary or explanation of the information.

- When the Department gives the client more than one accounting of disclosures in a 12-month period.

Historically, the Department has allowed local offices and facilities to charge fees in similar circumstances, such as when a client requests a copy of information out of the client's income maintenance case record.

HIPAA regulations provide various reasons for the Department to deny each of the requests, but the specific reason for the denial must be given to the client in writing. Clients may file a complaint with the Department's Privacy Office or with the Secretary of Health and Human Services if they feel the Department has violated their privacy rights.

HIPAA regulations require the Department to provide a process for clients to register complaints about the Department's policies and procedures or its compliance with HIPAA requirements. The Department has established that process in 441—subrule 9.14(6). Complaints will be handled by the Department's Privacy Office. Clients may also file a complaint with the Secretary of the federal Department of Health and Human Services.

To ensure fairness, 441—subrule 9.14(7) and revisions to 441—Chapter 7 also provide an appeal process, through the normal channels, when clients are dissatisfied with the final

HUMAN SERVICES DEPARTMENT[441](cont'd)

decision on their request for restriction, confidential communication, access, amendment, or accounting. Clients must first exhaust any review or rebuttal rights provided through the HIPAA process. Then, if still dissatisfied with the decision, clients may request a hearing through the Department's normal appeal process for contested cases found in 441—Chapter 7.

Chapter 9 is also amended to correct obsolete citations to the Iowa Code and administrative rules, update references to the Department and other state agencies, and rescind policy providing for subscriptions to Department manuals. Due to budget and staff constraints, the Department no longer allows subscriptions to its manuals, nor does it furnish copies of manuals to individual staff members. The Department's manuals are available on the Internet for use by staff and the public.

The chart in rule 441—9.11(22) that describes the availability of Department records is amended to add the Pharmaceutical and Therapeutics Committee records as partly open and partly confidential documents. The procedure to disclose such records is documented under rule 441—9.3(17A, 22).

These amendments do not provide for waivers in specified situations. The changes are technical in nature, are intended to benefit Department clients, and implement federal regulations that the Department does not have the authority to waive. Clients who believe themselves to be disadvantaged by these amendments may request an exception under the Department's general rule at 441—1.8(17A, 217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2902B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before November 19, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 217.22; 2003 Iowa Acts, House File 619, section 3, as amended by 2003 Iowa Acts, Senate File 458, section 161; and Iowa Code chapter 22.

ARC 2903B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 76, “Application and Investigation,” Iowa Administrative Code.

These amendments:

- Add the on-line HAWK-I application as a valid Medicaid application.

- Update form numbers and add references to the Spanish translations of the Health Services Application and the Notice of Decision, Forms 470-2927(S) and 470-0486(S), respectively. (The HAWK-I application in the Comm. 156 brochure is printed in English on one side and Spanish on the other side.)

All applications for HAWK-I benefits must be screened for potential Medicaid eligibility. When Medicaid eligibility is found, the family is not required to complete another application form to receive Medicaid benefits. The HAWK-I program is implementing an on-line application process, so the Department needs to be able to recognize the new on-line application as a valid Medicaid application.

These amendments do not provide for waivers in specified situations because these changes are a benefit to applicants.

Any interested person may make written comments on the proposed amendments on or before November 19, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

Amend rule 441—76.1(249A) as follows:

Amend the introductory paragraph and first unnumbered paragraph as follows:

441—76.1(249A) Application. An application for family medical assistance-related Medicaid programs shall be submitted on the Public Assistance Application, Form 470-0462 or Form 470-0466 (Spanish); the Health Services Application, Form 470-2927 or Form 470-2927(S); ~~or the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156; and the Supplement to the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3564 or the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016.~~ The Health Services Application, Form 470-2927 or Form 470-2927(S), shall be used for persons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35).

An application for SSI-related Medicaid shall be submitted on the Health Services Application, Form 470-2927 or Form 470-2927(S). The Health Services Application, Form 470-2927 or Form 470-2927(S), shall be used for persons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35).

Amend the third unnumbered paragraph as follows:

An application for Medicaid for persons in foster care shall be submitted on Form 470-2927 or Form 470-2927(S), Health Services Application.

Amend subrule **76.1(1)**, paragraph “b,” as follows:

b. ~~The Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, and the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016,~~ shall be filed with the third-party administrator as provided at 441—subrule 86.3(3). If it appears that the family is Medicaid-eligible, the third-party administrator shall forward the application to the department office responsible for determining Medicaid eligibility.

Amend subrule **76.1(2)**, paragraph “c,” as follows:

c. ~~When a Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, or HAWK-I Electronic Application Summary and Signature Page, Form 470-4016,~~ is filed with the third-party administrator and subsequently referred to the department for a Medicaid eligibility

HUMAN SERVICES DEPARTMENT[441](cont'd)

determination, the date the application is received and date-stamped by the third-party administrator shall be the filing date.

Amend subrule 76.1(6) as follows:

76.1(6) Right to withdraw the application. After an application has been filed, the applicant may withdraw the application at any time ~~prior to~~ *before* the eligibility determination. The applicant may request that the application be withdrawn entirely or may, ~~prior to~~ *before* the date the application is processed, request withdrawal for any month covered by the application process except as provided in the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Requests for voluntary withdrawal of the application shall be documented in the case record and a ~~notice of decision~~ *Notice of Decision*, Form PA-3102-0 470-0485, 470-0486, 470-0486(S), or PA-3159-0 470-0490, shall be sent to the applicant confirming the request.

ARC 2906B**HUMAN SERVICES
DEPARTMENT[441]****Amended Notice of Intended Action—Public Hearing**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services has proposed to amend Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services,” Iowa Administrative Code, in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2789B**. The proposed amendments change Medicaid coverage limitations for drugs by expanding prior authorization requirements and implementing a preferred drug list, as directed by 2003 Iowa Acts, House File 619, section 3.

At the request of the Pharmaceutical Research and Manufacturers of America, the Department has scheduled a public hearing for the purpose of receiving comments on these amendments. The hearing will be held on November 24, 2003, from 9 to 10 a.m. in the First Floor Southeast Conference Room, Side One, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

Anyone who intends to attend the hearing and has special requirements, such as hearing or vision impairments, should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

Comments may be offered at the hearing either orally or in writing. The deadline for written comments on **ARC 2789B** is extended to November 24, 2003.

The amendments are intended to implement 2003 Iowa Acts, House File 619, section 3.

ARC 2892B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 514I.5, subsection 8, the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

These amendments:

- Establish a procedure for electronic filing of HAWK-I applications. Under these amendments, applicants will be able to submit information through the HAWK-I Web site. The third-party administrator will mail the applicant a form summarizing the data submitted and requesting the applicant’s signature. The date that this signed form is returned will be considered the filing date for the HAWK-I application (and for the Medicaid application if the family is referred for Medicaid eligibility determination).

- Clarify that only income of the family members who are living together is considered in determining HAWK-I eligibility.

- Remove references to legal custody. Only the physical custody of the child is considered in determining whether the parent and child are “living together” for the purpose of qualifying for HAWK-I coverage.

These amendments do not provide for waivers in specified situations because they confer a benefit on affected families and make technical changes. Families that want to request a waiver can do so under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before November 19, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend subrule **86.2(2)**, paragraph “a,” subparagraph (2), introductory paragraph, as follows:

(2) Unearned income. The unearned income of all parents, spouses and children under the age of 19 *who are living together in accordance with subrule 86.2(3)* shall be counted. Unearned income is any income in cash that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

ITEM 2. Amend subrule **86.2(3)**, paragraph “b,” as follows:

b. Parents. Any parent living with the child under the age of 19 shall be included in the family size. This includes the biological parent, stepparent, or adoptive parent of the child and is not dependent upon whether the parents are mar-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ried to each other. In situations where the parents do not live together but share joint legal or physical custody of the children, the family size shall be based on the household in which the child spends the majority of the time. If both parents share legal or physical custody equally, either parent may apply for on behalf of the child and the family size shall be based on the household of the applying parent.

ITEM 3. Amend subrule 86.3(2) as follows:

86.3(2) Application form. An application for the HAWK-I program shall be submitted on ~~Form 470-3526 Comm. 156, Healthy and Well Kids in Iowa (HAWK-I) Application, or on Form 470-4016, HAWK-I Electronic Application Summary and Signature~~, unless the family applies for the Medicaid program first.

a. When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provisions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the ~~Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, or Form 470-4016, HAWK-I Electronic Application Summary and Signature~~.

b. Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator or by accessing the Web site at www.hawk-i.org.

ITEM 4. Amend subrule 86.3(4) as follows:

86.3(4) Date and method of filing. The application is considered filed on the date an identifiable application is received by the third-party administrator ~~unless the family has applied for Medicaid first and a referral is made to the third-party administrator by the county office of the department, in which case, the date the Medicaid application was originally filed with the department shall be the filing date~~. An identifiable application is an application containing a legible name, address, and signature.

a. *Medicaid applications referred to the HAWK-I program.* When the family has applied for Medicaid first and the department local office makes a referral to the third-party administrator, the date the Medicaid application was originally filed with the department shall be the filing date.

b. *Electronic applications.* When an application is submitted electronically to the third-party administrator, the application is considered filed on the date the third-party administrator receives Form 470-4016, HAWK-I Electronic Application Summary and Signature, containing a legible signature.

ARC 2893B

HUMAN SERVICES
DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 170, “Child Care Services,” Iowa Administrative Code.

Iowa Code section 237A.29 requires the Department to impose sanctions on child care providers that receive Child Care Assistance funding by fraudulent means. The statute sets the potential sanctions and the factors the Department must consider in imposing a sanction. Sanctions may include a review of the provider’s billing records, suspension from receipt of Child Care Assistance payments, or ineligibility to participate in Child Care Assistance.

The statute also requires sanctioned providers to report the names and addresses of the children receiving care so that the Department may notify the families. If the provider does not comply, the statute permits the Department to seek an injunction to prevent the provider from operating. If the sanction involves suspension or termination of payment, the Department may not impose the sanction before the affected families are informed and must assist families in locating replacement child care upon request.

These amendments:

- Define how the Department will determine what sanction to impose on a provider that has committed fraud.
- Remove obsolete references to family and group child care homes. Registration categories for child care provided in a family home were amended in **ARC 2085B** published in the Iowa Administrative Bulletin on October 30, 2002.

These amendments do not provide for waivers in specified situations because sanction provisions are set by statute and the Department has no authority to waive them. A provider that is sanctioned may appeal that decision in accordance with rules 441—7.5(17A) and 441—7.8(17A).

Any interested person may make written comments on the proposed amendments on or before November 19, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 237A.20 and 237A.3A.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or vocational training; or employed or looking for employment; or for a limited period of time, ~~absent unable to care for children due to hospitalization, physical or mental illness, or death~~; or needing protective services to prevent or alleviate

HUMAN SERVICES DEPARTMENT[441](cont'd)

child abuse or neglect. Services may be provided in a licensed child care center, a registered group child care development home, a registered family child care home, the home of a relative, the child's own home, a nonregistered family child care home, or in a facility exempt from licensing or registration.

ITEM 2. Amend rules **441—170.1(234)** through **441—170.9(234)**, parenthetical implementation, as follows:
(234 237A)

ITEM 3. Amend rule **441—170.1(237A)** as follows:

Amend the definition of "provider" as follows:

"Provider" means a licensed child care center, a registered group child care development home, a registered family child care home, a relative who provides care in the relative's own home solely for a related child (relative care), a caretaker who provides care for a child in the child's home (in-home), a nonregistered child care home, or a child care facility which is exempt from licensing or registration.

Adopt the following **new** definition in alphabetical order:

"Fraudulent means" means knowingly making or causing to be made a false statement or a misrepresentation of a material fact, knowingly failing to disclose a material fact, or committing a fraudulent practice.

ITEM 4. Amend rule 441—170.4(237A) as follows:

Amend subrule **170.4(3)** as follows:

Amend paragraph "b" as follows:

b. Registered group child care development home. A group child care development home shall meet the requirements for registration set forth in 441—Chapter 110 and shall have a current Certificate of Registration, Form 470-3498.

Rescind and reserve paragraph "c."

Amend subrule **170.4(7)**, paragraph "a," Table I, Table II, and subparagraph (1), as follows:

Table I Half-Day Rate Ceilings for Basic Care				
Age Group	Day Child Care Center	Registered Family Child Development Home Category A or B	Registered Group Child Development Home Category C	Non-registered Family Home
Infant and Toddler	\$12.45	\$10.00	\$9.00	\$8.19
Preschool	\$10.50	\$ 9.00	\$8.55	\$7.19
School Aged	\$ 9.00	\$ 9.00	\$8.33	\$7.36

Table II Half-Day Rate Ceilings for Special Needs Care				
Age Group	Day Child Care Center	Registered Family Child Development Home Category A or B	Registered Group Child Development Home Category C	Non-registered Family Home
Infant and Toddler	\$48.00	\$15.75	\$12.38	\$10.24
Preschool	\$28.13	\$14.63	\$12.38	\$8.99
School Aged	\$28.04	\$13.50	\$11.25	\$9.20

(1) "Child care center" shall mean those providers as defined in 170.4(3)"a" and "g."; "registered family child care home" shall mean those providers as defined in 170.4(3)"c"; "registered group Registered child care development home" shall mean those providers as defined in 170.4(3)"b."; and "nonregistered Nonregistered family child care home" shall mean those providers as defined in 170.4(3)"d" and "f."

ITEM 5. Adopt **new** rule 441—170.7(237A) as follows:

441—170.7(237A) Provider fraud.

170.7(1) Fraud. The department shall consider a child care provider to have committed fraud when:

a. The department of inspections and appeals, in an administrative or judicial proceeding, has found the provider to have obtained by fraudulent means child care assistance payment in an amount in excess of \$1,000; or

b. The provider has agreed to entry of a civil judgment or judgment by confession that includes a conclusion of law that the provider has obtained by fraudulent means child care assistance payment in an amount in excess of \$1,000.

170.7(2) Potential sanctions. Providers found to have committed fraud shall be subject to one or more of the following sanctions, as determined by the department:

a. Special review of the provider's claims for child care assistance.

b. Suspension from receipt of child care assistance payment for six months.

c. Ineligibility to receive payment under child care assistance.

170.7(3) Factors considered in determining level of sanction. The department shall evaluate the following factors in determining the sanction to be imposed:

a. History of prior violations.

(1) If the provider has no prior violations, the sanction imposed shall be a special review of provider claims.

(2) If the provider has one prior violation, the sanction imposed shall be a suspension from receipt of child care assistance payment for six months as well as a special review of provider claims.

(3) If the provider has more than one prior violation, the sanction imposed shall be ineligibility to receive payment under child care assistance.

b. Prior imposition of sanctions.

(1) If the provider has not been sanctioned before, the sanction imposed shall be a special review of the provider's claims for child care assistance.

(2) If the provider has been sanctioned once before, the sanction imposed shall be a suspension from receipt of child care assistance payment for six months as well as a special review of provider claims.

(3) If the provider has been sanctioned more than once before, the sanction imposed shall be ineligibility to receive payment under child care assistance.

c. Seriousness of the violation.

(1) If the amount fraudulently received is less than \$5,000, the sanction level shall be determined according to paragraphs "a" and "b."

(2) If the amount fraudulently received is \$5,000 or more, and the sanction determined according to paragraphs "a" and "b" is review of provider claims, the sanction imposed shall be suspension from receipt of child care assistance payment.

(3) If the amount fraudulently received is \$5,000 or more, and the sanction determined according to paragraphs "a" and "b" is suspension from receipt of child care assistance payment, the sanction imposed shall be ineligibility to receive payment under child care assistance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

d. Extent of the violation.

(1) If the fraudulent claims involve five invoices or less or five months or less, the sanction level shall be determined according to paragraphs "a" and "b."

(2) If the fraudulent claims involve at least six invoices or six months, and the sanction determined according to paragraphs "a" and "b" is review of provider claims, the sanction imposed shall be suspension from receipt of child care assistance payment.

(3) If the fraudulent claims involve at least six invoices or six months, and the sanction determined according to paragraphs "a" and "b" is suspension from receipt of child care assistance payment, the sanction imposed shall be ineligibility to receive payment under child care assistance.

170.7(4) Mitigating factors.

a. If the sanction determined according to subrule 170.7(3) is suspension from or ineligibility for receipt of child care assistance payment, the department shall determine whether it is appropriate to reduce the level of a sanction for the particular case, considering:

(1) Prior provision of provider education.

(2) Provider willingness to obey program rules.

b. If the sanction determined according to subrule 170.7(3) is ineligibility for receipt of child care assistance payment, but consideration of the two factors in paragraph "a" indicates that a lesser sanction will resolve the violation, the sanction imposed shall be:

(1) Suspension from receipt of child care assistance payment for six months; and

(2) A special review of provider claims.

c. If the sanction determined according to subrule 170.7(3) is suspension from receipt of child care assistance payment, but consideration of the two factors in paragraph "a" indicates that a lesser sanction will resolve the violation, the sanction imposed shall be a special review of provider claims.

ITEM 6. Amend **441—Chapter 170**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 234.6(6)"a." sections 237A.13 and 237A.29.

ARC 2912B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 99B.13, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 104, "Amusement Devices," and to adopt new Chapter 105, "Registered Amusement Devices," Iowa Administrative Code.

The proposed amendments implement 2003 Iowa Acts, House File 594, an Act relating to the registration of electrical and mechanical amusement devices. The proposed amendments: require that all amusement devices be regis-

tered annually with the Department of Inspections and Appeals; impose a \$25 per device registration fee; require all manufacturers, manufacturers' representatives and distributors of amusement devices to register annually and pay an annual \$2,500 registration fee; set out penalties for violations; and make corresponding technical changes to Chapter 104 to bring it into compliance with the requirements of 2003 Iowa Acts, House File 594.

The proposed amendments do not contain a waiver provision as the requirements are mandated by statute.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 18, 2003. Such written material should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on November 19, 2003, at 10 a.m. in Conference Room 311 of the Lucas State Office Building, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Inspections and Appeals and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 99B and 2003 Iowa Acts, House File 594.

The following amendments are proposed.

ITEM 1. Amend rule **481—104.1(10A,99B)** by adding the following **new** definition in alphabetical order:

"Prize" means a ticket or token that is dispensed by an amusement device as an award for use and is worth up to \$5 in merchandise.

ITEM 2. Amend rule **481—104.3(99B)** by adding the following **new** numbered paragraph "**5**":

5. Amusement devices designed or adapted to facilitate gambling.

ITEM 3. Amend subrule **104.4(3)** by adding the following **new** paragraphs "**f**" and "**g**":

f. If the entire amount of the ticket or token issued by the amusement device is not redeemed for merchandise, the balance shall not be redeemed for cash.

g. Tickets or tokens shall only be redeemed on the premises where the amusement device is located and only for merchandise sold in the normal course of business on the premises.

ITEM 4. Amend rule **481—104.6(99B)**, numbered paragraph "**1**," as follows:

1. Conviction for illegal gambling ranging from a serious misdemeanor to a class "**C**" felony, fines of up to \$10,000, or confinement up to ten years under the provisions of Iowa Code chapter 725.

ITEM 5. Adopt the following **new** chapter:

**CHAPTER 105
REGISTERED AMUSEMENT DEVICES**

481—105.1(10A,99B) Definitions. Definitions in rule 481—104.1(10A,99B) are incorporated by reference in this chapter. In addition, the following definitions apply to the possession and use of registered amusement devices.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

“Organization” means an entity that meets the requirements of Iowa Code section 99B.7(1)“m.”

“Owner” means a person who owns a registered amusement device. Each registered amusement device must be registered by the owner, and whenever the registered amusement device is sold, it must be re-registered in accordance with these rules.

“Person” means a person as defined by Iowa Code section 4.1.

“Premises” means a location where one or more registered amusement devices are available for public use.

“Prize” means a ticket or token that is dispensed by a registered amusement device as an award for use and is worth up to \$5 in merchandise.

“Registered amusement device” means an electrical and mechanical amusement device subject to registration by the department pursuant to Iowa Code section 99B.10 as amended by 2003 Iowa Acts, House File 594, section 1(4), and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required.

“Registered amusement device distributor” means a person engaged in business in this state who owns, leases as a lessor, or sells registered amusement devices or individual components for use in registered amusement devices. Lessees of registered amusement devices are not registered amusement device distributors. For purposes of this definition, “owns” means an ownership interest with intent to lease or sell the registered amusement device to another and does not include a person that merely owns but does not intend to lease or sell the registered amusement device to another.

“Registered amusement device manufacturer” means a person engaged in business in this state who originally produces registered amusement devices or individual components for use in registered amusement devices.

“Registered amusement device manufacturer’s representative” means a person engaged in business in this state who promotes or sells registered amusement devices on behalf of a registered amusement device manufacturer.

481—105.2(99B) Registered amusement device restrictions. A registered amusement device may be owned, possessed, and offered for use by any person at any location, but only if the device complies with all of the requirements of Iowa Code section 99B.10 as amended by 2003 Iowa Acts, House File 594, section 1, and 481—104.2(99B). The registered amusement device shall not be designed or adapted to facilitate gambling.

481—105.3(99B) Prohibited registered amusement devices. The following devices are prohibited:

1. Amusement devices registered in violation of statutory or regulatory requirements governing such devices.
2. Registered amusement devices that are prohibited by 481—104.3(99B).
3. Any registered amusement device that does not conform to the requirements in these rules or Iowa Code chapter 99B as amended by 2003 Iowa Acts, House File 594.
4. Any registered amusement device designed or adapted to facilitate gambling.

481—105.4(99B) Prizes. Prizes may be awarded for use of a registered amusement device, but only in conformance with 481—104.4(99B). All prizes awarded must be in conformance with each of the requirements imposed by 481—104.4(99B).

481—105.5(99B) Registration by a manufacturer, manufacturer’s representative, or distributor. A person engaged in business in Iowa as a registered amusement device manufacturer, a registered amusement device manufacturer’s representative or a registered amusement device distributor shall be registered with the department.

105.5(1) Each person who registers with the department shall pay an annual registration fee of \$2,500.

105.5(2) Registration forms are available from the Department of Inspections and Appeals, Social and Charitable Gambling Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. Applicants may also register electronically at the following Web site: <https://www.egov.state.ia.us/gmms/>.

105.5(3) If registration information changes, the department shall be notified in writing or electronically of the changes within ten working days.

105.5(4) Registration fees are nonrefundable.

481—105.6(99B) Registration of registered amusement devices. Each owner of an amusement device subject to registration by the department pursuant to Iowa Code section 99B.10 as amended by 2003 Iowa Acts, House File 594, section 1(4), shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use. Upon the transfer of ownership of a registered amusement device, the new owner shall obtain a new registration for the registered amusement device.

105.6(1) Each person owning a registered amusement device in Iowa shall obtain a registration tag for each amusement device owned for which registration under this chapter is required. The registration tag shall be valid for a period of one year from the date of issuance. Each new owner is required to obtain a new registration for the registered amusement device immediately upon taking possession of the registered amusement device.

105.6(2) Upon receipt of an application and a fee of \$25 for each registered amusement device, the department shall issue an annual registration tag.

Application forms are available from the Department of Inspections and Appeals, Social and Charitable Gambling Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. The application form shall contain all information required by the department.

Applicants may also apply electronically for registration tags at the following Web site: <https://www.egov.state.ia.us/gmms/>.

The registration tag shall be prominently displayed on the front of the registered amusement device in such manner as to be clearly visible to the general public.

Any changes to the information provided on the application, including but not limited to changes in ownership, registered amusement device location, and the cessation of business in this state, shall be reported to the department in writing or electronically within ten working days.

Registration fees are nonrefundable.

105.6(3) A registered amusement device must be obtained from a registered amusement device manufacturer, a registered amusement device manufacturer’s representative or a registered amusement device distributor that is registered with the department pursuant to 2003 Iowa Acts, House File 594, section 2, and this chapter.

105.6(4) An organization shall not permit or offer for use more than four registered amusement devices at any single premises. All other persons shall not permit or offer for use

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

more than two registered amusement devices at any single premises.

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B as amended by 2003 Iowa Acts, House File 594, may result in the following:

1. Conviction for illegal gambling under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.
4. Violation of any laws pertaining to gambling may result in revocation of a registration.
5. The department may revoke a registration or refuse to issue a registration for cause.
6. A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B as amended by 2003 Iowa Acts, House File 594.
7. A registration may be revoked upon the violation of any rule adopted by the department under this chapter.
8. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B as amended by 2003 Iowa Acts, House File 594.
9. The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.

The period for revocation or refusal to issue or both shall not exceed two years.

481—105.8(10A,99B) Appeal rights. Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in 481—Chapter 10. The refusal to issue a registration or the notice of revocation shall be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

105.8(1) No registration will be issued when a new application is denied.

105.8(2) A previously issued registration remains effective until a final agency decision is issued.

These rules are intended to implement Iowa Code chapter 99B and 2003 Iowa Acts, House File 594.

ARC 2911B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455A.19(1), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 33, “Resource

Enhancement and Protection Program: County, City, and Private Spaces Grant Programs,” Iowa Administrative Code.

The Department proposes the adoption of a new rule establishing a public communication component for projects receiving funding through Iowa’s Resource Enhancement and Protection (REAP) Program. The purposes of the public communication component are to increase awareness of the availability of new public resources and increase awareness of the impacts of REAP projects in local communities. Additionally, references to the 1988 Iowa open spaces protection plan are being removed and replaced with references to the state conservation and outdoor recreation plan. These changes are necessary because the Iowa open spaces plan is out of date and no longer useful. The conservation and outdoor recreation plan is updated periodically and is therefore more appropriate for the evaluation of projects seeking REAP funding.

Any interested person may make written comments on these proposed amendments on or before November 19, 2003. Such written materials should be directed to Ross Harrison, Outreach and REAP Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact Ross Harrison at (515)281-5973.

A public hearing will be held on November 19, 2003, at 10:30 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of special needs.

These amendments are intended to implement Iowa Code sections 455A.15 through 455A.21.

The following amendments are proposed.

ITEM 1. Amend subrule 33.5(1) as follows:

33.5(1) Any project submitted from a city or county for grant consideration, *or for the private cost-sharing program*, must first have been reviewed and commented on by the county resource enhancement committee from the county in which the project is located. Application must include documentation of that review and a summary of any comments made by the committee.

ITEM 2. Amend 571—Chapter 33 by adopting the following new rule:

571—33.22(455A) Public communications. Grant recipients shall participate in public communications activities to inform the public of the REAP program and of their particular project. The project will not be considered successfully completed, for purposes of 571—33.15(455A), until evidence is provided to the department REAP coordinator that the following requirements have been met. The remaining 10 percent payment of the grant total will not be issued until such evidence has been provided. Evidence includes but is not limited to photographs showing sign placement, newspaper or magazine clippings, printed brochures or fliers available to the public, exhibits for public display and other related materials. Information gathered from site inspections by the department may also be considered acceptable evidence.

33.22(1) Signs. Grant recipients are required to adequately display the 12-inch by 12-inch REAP signs, provided by

NATURAL RESOURCE COMMISSION[571](cont'd)

the department at no charge, on project locations where appropriate so that users of the project can readily see that REAP is at least partially responsible for the project. The REAP signs will be maintained and replaced as necessary as long as the department has signs available.

33.22(2) Dedication ceremony. Grant recipients shall hold a public meeting or event to dedicate the project. Information provided during the event shall include information in regard to the REAP program and its role in supporting the project. This information shall also be provided to local news media by use of a news release. Local and state elected officials shall be invited to attend and participate.

33.22(3) Grants include public communications plan. A description of the public communications plan shall be included in all projects submitted as a grant request. Grant recipients shall carry out the plan if their project is funded.

ITEM 3. Amend subrule **33.30(4)**, paragraph “f,” as follows:

f. Relationship to ~~Iowa open spaces plan or the Iowa statewide comprehensive outdoor recreation plan (3) and other current and relevant state, regional and local plans. (4)~~

ITEM 4. Amend subrule **33.30(4)** by rescinding paragraph “g” and adopting the following new paragraph “g” in lieu thereof:

g. Quality of public communications plan. (1)

ITEM 5. Amend subrule 33.40(5) as follows:

33.40(5) Criteria for project evaluation. Criteria and weight factors to be used in scoring projects shall include, but are not limited to, the following:

- 1 a. Quality of site or project, or both. (3)
- 2 b. Direct ~~recreation~~ recreational benefits. (2)
- 3 c. Local need. (2)

4 d. Number of people benefited. (2)

5. ~~Relationship to state and local plans (2)~~

6 e. Relationship to ~~Iowa open space protection program (3) state comprehensive outdoor recreation plan and other current and relevant state, regional and local plans. (4)~~

7 f. Environmental benefits. (2)

g. Quality of public communications plan. (1)

ITEM 6. Amend subrule 33.50(4) as follows:

33.50(4) Project review and selection committee. The director shall appoint a committee to review and score projects. The committee shall include the following: three persons representing the private sector selected from a pool of potential names as submitted by the various private eligible groups; ~~administrator of the forests and forestry division of the department; administrator of the parks, recreation and preserves division of the department; and administrator of the fish and wildlife division of the department~~ *conservation and recreation division of the department, or the administrator's designee; and the bureau chiefs of the department's forestry bureau and parks and preserves bureau or their designees.* The committee shall elect its own chairperson from its members. The director shall request a list of candidates for the private sector members from groups eligible to participate in this program.

The committee will report to the director the order in which proposed projects were ranked using criteria as specified in 33.50(5).

ITEM 7. Amend subrule 33.50(5) as follows:

33.50(5) Criteria. The following criteria and their respective weights ~~as defined and described in the 1988 Iowa open spaces protection plan~~ shall be used by the committee, along

with other criteria which are determined by the committee to be relevant.

1 a. Level of significance. (3)

2 b. Resource representation. (3)

3 c. Level of threat. (3)

4 d. Relationship to existing public land. (3)

5 e. Rare or unique species or communities. (2)

6 f. Public benefits. (2)

7 g. Tourism and economic development potential. (1)

8 h. Geographic distribution. (1)

9 i. Multiple use potential. (1)

10 j. Available funds relative to project costs. (1)

k. *Quality of public communications plan. (1)*

l. *Relationship to state comprehensive outdoor recreation plan and other current and relevant state, regional and local plans. (3)*

NATURAL RESOURCES DEPARTMENT

NOTICE OF PUBLIC HEARING—IOWA DRINKING WATER REVOLVING FUND INTENDED USE PLAN

Iowa's drinking water state revolving fund program makes loans to drinking water systems for design and construction to ensure public health and provide safe drinking water. The Iowa Department of Natural Resources (DNR) publishes loan priorities each year in its Intended Use Plan (IUP). Scoring criteria address health risks, rule compliance, and infrastructure needs, including criteria for loan eligibility. The criteria include a point system based on Maximum Contaminant Level violations, system vulnerability, infrastructure improvement needs, population, and design deficiencies.

A public hearing on the IUP will be held at the DNR Water Supply Offices, West Conference Room, 401 SW 7th Street, Suite M, Des Moines, Iowa, on November 19, 2003, at 9:30 a.m. Comments on the IUP will be accepted at that time and all written comments must be received by the Department on or before November 26, 2003. For questions or to obtain a copy of the draft IUP, contact Michael Anderson at (515)725-0336 (E-mail: michael.anderson@dnr.state.ia.us) or Jennifer Simons at (515)725-0298 (E-mail: jennifer.simons@dnr.state.ia.us).

ARC 2908B

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14, 421.17(2), and 438.10, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 77, “Determination of Value of Utility Companies,” Iowa Administrative Code.

REVENUE DEPARTMENT[701](cont'd)

The amendments are proposed because of discussions between the Department and industry. The changes clarify a number of issues.

Item 1 amends subrule 77.1(1) to remove electric and gas companies from the definition of "utility company" under the provisions of Chapter 77 if they are subject to tax under Iowa Code chapter 437A, Taxes on Electricity and Natural Gas Providers (Replacement Tax).

Item 2 amends rule 77.1(428,433,437,438) to provide a definition for "replacement cost new less depreciation" (RCNLD) as this is one of the methods the Department uses to value telephone companies.

Item 3 amends an implementation clause.

Item 4 amends subrule 77.4(4) to require that investment tax credits be deducted from the income of pipeline companies in determining market value. This change in appraisal methodology was the result of a settlement between the Department and interstate pipeline companies for purposes of arriving at a fair market value of pipeline property in future years.

Item 5 amends subrule 77.4(6) to remove accumulated deferred income taxes as a source of capital. The removal of accumulated deferred income taxes from the stock and debt approach to value was the result of a settlement compromise with the utility companies for purposes of arriving at a fair market value of utility property in future years.

Item 6 amends an implementation clause.

Item 7 amends subrule 77.5(1) to provide a formula for capitalizing the net operating income for pipeline companies. The formula is a three-year weighted average with the most current years having the greater impact. Also, the amendment requires investment tax credits to be deducted from the income stream. This is an acceptable change in appraisal methodology that was the result of a settlement compromise with the interstate pipeline companies for purposes of arriving at a fair market value of pipeline property in future years.

Item 8 amends an implementation clause.

Item 9 amends rule 77.6(428,433,437,438) to permit the Director to use replacement cost new less depreciation (RCNLD) in determining the market value of telephone companies.

Items 10 and 11 amend implementation clauses.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 1, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 18, 2003. Such written comments should be directed

to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 21, 2003.

These amendments are intended to implement Iowa Code chapters 428, 433, 437, and 438 and section 476.1D(10).

The following amendments are proposed.

ITEM 1. Amend subrule 77.1(1) as follows:

77.1(1) The term "utility company" shall mean and include all persons engaged in the operating of gasworks, waterworks, telephones, including telecommunication companies and cities that own or operate a municipal utility providing local exchange services pursuant to Iowa Code chapter 476, pipelines, electric transmission lines, and electric light or power plants, as set forth in Iowa Code chapters 428, 433, 437, and 438. *Any utility company subject to taxation under Iowa Code chapter 437A shall not be subject to valuation under this chapter.*

ITEM 2. Amend rule 701—77.1(428,433,437,438) by adding the following new subrule:

77.1(13) The term "replacement cost new less depreciation" or "RCNLD" shall mean the cost to the present owner of acquiring or constructing at current prices a property that is the functional equivalent of an existing property less an allowance for depreciation.

ITEM 3. Amend rule **701—77.1(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapters 428, 437, and 438; ~~section and sections 433.12 as amended by 1999 Iowa Acts, chapter 63; and Iowa Code section 476.1D(10).~~

ITEM 4. Amend subrule **77.4(4)** by relettering paragraphs "g" to "i" as "h" to "j" and adopting the following new paragraph "g":

g. The income determined in 77.4(4), paragraph "a," for pipeline companies shall be further reduced by deducting the current year net adjustment expense for investment tax credits.

ITEM 5. Amend subrule 77.4(6) as follows:

77.4(6) In the event the utility company has other sources of capital, such as (by way of illustration and not limitation) current liabilities, ~~accumulated deferred income taxes~~ and accumulated investment tax credits which cannot be identified as having been utilized to purchase specific assets, the market value of such sources of capital shall be allocated between operating and nonoperating assets in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). *Accumulated deferred income taxes are not included in this adjustment. The book value for accumulated deferred income taxes should be removed from the stock and debt approach before making this calculation.* If any such source of capital was created specifically for the purchase of property which can be identified as operating property or nonoperating property, the utility company must identify such sources of capital in their annual report to the department, together with the appropriate evidence of such. If the utility company fails to provide such information, the department may determine that such sources of capital may be allo-

REVENUE DEPARTMENT[701](cont'd)

cated in the same manner as long-term debt or preferred stock (see subrules 77.4(2) and 77.4(3)). The market value of any such source of capital, in the absence of evidence to the contrary submitted by the utility with its annual report, shall be the book value.

ITEM 6. Amend rule **701—77.4(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

ITEM 7. Amend subrule 77.5(1) as follows:

77.5(1) The income capitalization approach to unit value estimates the market value of the operating property by dividing the income stream generated by the operating assets by a market derived capitalization rate based on the costs of the various sources of capital utilized or available for use to purchase the assets generating the income stream. The purpose and intent of the income indicator of value is to match income with sources of capital and, therefore, every source of capital utilized *used* or available to be utilized *used* to purchase assets should be reflected in the capitalization rate determination as well as all operating income.

The net operating income to be capitalized for pipeline companies shall be a weighted average net operating income. The weighted average net operating income shall consist of an average of the three 12-month periods immediately preceding the valuation date. Each of the three preceding 12-month periods shall be weighted by multiplying the first preceding period by three, the second preceding period by two, and the third preceding period by one. The income stream for pipeline companies shall be further reduced by deducting the current year net adjustment expense for investment tax credits.

~~In the event~~ If the utility company has no income or has a negative income, the indicator of value set forth in this subrule shall not be utilized.

If the utility company is one which is not allowed to earn a return on assets purchased with sources of capital such as the company's deferred income taxes, the income will not reflect the earnings on those assets, and as a consequence, a separate adjustment to the income indicator of value must be made to account for the value of those assets. In such instances, the income indicator of value shall be increased by an amount equal to the book value of the source of capital involved, such as the accumulated deferred income taxes. *The adjustment to the income approach for accumulated deferred income taxes shall not be made for pipeline companies.* If any other operating property is clearly not income producing *and*, therefore, not reflected in the income stream, the value of that asset shall be determined separately and added to the value of the other operating property as determined using the income indicator of value. The capitalization rate shall be adjusted, if necessary, for the market rate of return for the sources of capital utilized to purchase such non-income-producing properties where the sources can be clearly identified, ~~otherwise~~. *Otherwise*, the cost of the sources of capital shall be presumed to be equal to the overall market weighted costs of the identified sources of capital.

ITEM 8. Amend rule **701—77.5(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

ITEM 9. Amend rule **701—77.6(428,433,437,438)** as follows:

701—77.6(428,433,437,438) Cost approach to unit value.

The cost approach to unit value shall be determined by combining the cost of the operating properties of the utility and deducting therefrom an allowance for depreciation calculated on a straight-line basis. Other forms of depreciation may be deducted if found to exist. *The director may use the replacement cost new less depreciation (RCNLD) valuation methodology for determining the assessed value of the Iowa operating property required under Iowa Code chapter 433.*

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

ITEM 10. Amend rule **701—77.7(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

ITEM 11. Amend rule **701—77.8(428,433,437,438)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 428.29, 433.4, 437.6, 437.7, 437.14 and 438.14.

ARC 2907B

REVENUE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 453A.25(2), the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 81, “Administration,” Iowa Administrative Code.

The amendments are proposed because of 2003 Iowa Acts, Senate File 401.

Item 1 amends subrule 81.12(1) to reflect that, for violations of the sale of cigarettes or tobacco products to persons under 18 years of age, the city council, county board of supervisors, or the Iowa department of public health may assess penalties on the retailer, the severity of which is dependent upon the number of violations. These penalties are specified in section 453A.22(2) as amended by 2003 Iowa Acts, Senate File 401, and range from a fine of \$300 for a first violation to revocation of the retailer's permit for a fifth violation.

Item 2 amends the implementation clause for rule 701—81.12(453A).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 1, 2003, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office

REVENUE DEPARTMENT[701](cont'd)

Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business, or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before November 18, 2003. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 21, 2003.

These amendments are intended to implement Iowa Code chapter 453A as amended by 2003 Iowa Acts, Senate File 401.

The following amendments are proposed.

ITEM 1. Amend subrule **81.12(1)**, first unnumbered paragraph, as follows:

~~The board of supervisors or the city council that issued a retail permit is required by Iowa Code section 453A.22 to revoke the permit of any retailer violating Iowa Code section 453A.2 (sale or gift to minors). The board or council may revoke a retail permit for any other violation of division I of Iowa Code chapter 453A. If a retailer or employee of a retailer has violated Iowa Code section 453A.2 or 453A.36(6), the city council, county board of supervisors, or the Iowa department of public health shall assess a penalty as provided in Iowa Code section 453A.22(2) as amended by 2003 Iowa Acts, Senate File 401. The revocation penalty procedures are governed by Iowa Code section 453A.22(2)(1) and the individual council's or board's procedures. Iowa Code chapter 17A does not apply to boards of supervisors or city councils. (See rule 701—84.7(421B).) The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer, who is an individual, if the board or council has received a certificate of noncompliance from the child support recovery unit in regard to the retailer, unless the unit furnishes the board of supervisors or the city council with a withdrawal of the certificate of noncompliance.~~

ITEM 2. Amend rule **701—81.12(453A)**, implementation clause, as follows:

~~This rule is intended to implement Iowa Code sections 453A.13 and section 453A.22 as amended by 2000 2003 Iowa Acts, Senate File 2366 401, and sections 453A.13, 453A.44(11) and 453A.48(2).~~

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obliga-

tions and special assessments. The usury rate for October is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 10, 2003, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum 0.80%
32-89 days	Minimum 0.80%
90-179 days	Minimum 0.80%
180-364 days	Minimum 0.80%
One year to 397 days	Minimum 0.80%
More than 397 days	Minimum 1.30%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

November 1, 2002 — November 30, 2002	5.75%
December 1, 2002 — December 31, 2002	6.00%
January 1, 2003 — January 31, 2003	6.00%
February 1, 2003 — February 28, 2003	6.00%
March 1, 2003 — March 31, 2003	6.00%
April 1, 2003 — April 30, 2003	6.00%
May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%

ARC 2902B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.22, 22.11, and 217.6, and 441—subrule 3.10(2), the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Chapter 9, “Public Records and Fair Information Practices,” Chapter 13, “Program Evaluation,” Chapter 28, “Policies for All Institutions,” Chapter 75, “Conditions of Eligibility,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

These amendments update Department rules on confidentiality of records. The amendments add new policy needed to comply with federal law (Public Law 104-191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996) and federal regulations (45 CFR Parts 160 and 164 as amended to August 14, 2002) relating to standards to protect the privacy of protected health information. Chapter 9 is revised to implement applicable HIPAA federal regulations. References in other chapters are revised to conform to the Chapter 9 revisions.

The Department has designated itself as a “hybrid entity” for purposes of HIPAA compliance. Within the Department, HIPAA applies only to the Medicaid program, the HAWK-I program, and the facilities defined in rule 441—9.1(17A,22). Activities related to determining eligibility for Medicaid, paying Medicaid claims, and health care operations in the Department’s facilities are examples of HIPAA-covered activities in the Department.

These amendments establish requirements relating to the uses and disclosures of protected health information, the rights of clients with respect to their protected health information, and the procedures for exercising those rights. Federal HIPAA regulations define the type of records that constitute “protected health information.” In general, protected health information identifies a person in some way and contains information about that person’s past, present, or future medical condition, treatment, or payment for that treatment.

These amendments provide that the Department may not use or disclose protected health information without a written authorization from the subject of the record except:

- For the administration of covered Department programs, defined in HIPAA terminology as “treatment, payment, or health care operations.”
- As required by state law or by federal laws or regulations.

Federal regulations would permit the Department to use or disclose protected health information without a written authorization for public health activities, health oversight activities, judicial and administrative proceedings, law enforcement purposes, specialized government functions, research, and in the case of a serious threat to health or safety if certain conditions are met. Since Iowa’s state law and federal Medicaid regulations at 42 CFR 431.300 are generally more restrictive than the HIPAA regulations, in practical terms the Department may use and disclose protected health information for the two purposes listed above.

The Department must have a written authorization from the subject for any use of psychotherapy notes except for use by the originator of the notes for treatment, in certain supervised training programs, and when necessary to defend itself in a legal action brought by the subject.

Only those parts of the Department that are subject to HIPAA requirements may access protected health information without an authorization form. The Department must make reasonable efforts to limit use and disclosure of protected health information to the minimum necessary for staff to accomplish their duties.

The Department may disclose protected health information to the subject or the subject’s personal representative if a request is made in accordance with Department policy. “Personal representative” is a term defined in HIPAA regulations.

The HIPAA regulations place significant additional responsibilities on the Department. The Department is required to:

- Designate a person to be responsible for seeing that the privacy procedures are adopted and followed. The Department has established a privacy office, with a designated privacy official. The HIPAA Privacy Office is responsible for ensuring compliance with HIPAA regulations, responding to complaints and questions about privacy of protected health information, and handling any request for restriction, confidential communication, access, amendment, or accounting of protected health information. Centralized responsibility will help ensure consistency in the application of policies and procedures.

- Provide notice by April 2003 to all affected clients regarding the types of uses and disclosures of protected health information that may be made by the Department, and of the client’s rights and the Department’s legal duties with respect to protected health information. These amendments follow the federal guidelines, which require notice to be provided to affected new applicants, within 60 days to all affected clients if the notice is revised, and once every three years. The Department must also notify its affected clients of the availability of the notice and how to obtain it.

These amendments require that the notice be mailed to a household or eligible group, rather than to each client, in order to conserve costs related to printing and postage. HIPAA regulations do allow the Department to mail the notice electronically, rather than on paper, if the client agrees. However, these amendments do not provide clients with this option because the Department does not currently have the capability of maintaining an electronic file of those clients who want to receive the electronic rather than the paper version. Thus, the Department will mail the notice by U.S. mail. Nevertheless, the privacy officer will send the privacy notice by E-mail upon a client’s request.

- Train affected staff on the privacy policies and procedures by April 2003 and train affected new staff as they are hired.

- Establish a process for clients to file complaints concerning the Department’s policies and procedures and its compliance with them.

- Develop policies to ensure that only the minimum necessary information is used or disclosed.

- Identify staff who need access to protected health information to carry out their job duties, what information they need, and the conditions for gaining access to the information.

- Review all contracts with business associates with whom protected health information is shared to ensure the contracts are HIPAA-compliant.

These amendments implement HIPAA regulations giving Department clients the following rights regarding the protected health information in Department records:

- The right to inspect and copy protected health information. This right does not apply to psychotherapy notes, in-

HUMAN SERVICES DEPARTMENT[441](cont'd)

formation gathered to prepare for civil, criminal or administrative actions or proceedings, and when the law does not permit the release. The client may be charged a fee for the cost of copying the records.

The regulations contain a list of reasons that the Department may use to deny access, at state option. If the Department denies access because a licensed health care professional has health or safety concerns about granting access, HIPAA regulations require that the client has the right to request a second-level review by another licensed health professional. The Department is not required to offer this second-level review for other reasons for denial of access. Due to budgetary and logistical concerns, the Department will not provide second-level reviews by a licensed health care professional except when required by the federal regulations.

- The right to revoke written authorization permitting disclosure of protected health information.
- The right to amend protected health information when the client believes the information is incorrect. These amendments adopt federal requirements and options. These amendments require the client to make a request for amendment in writing on the form specified in the rules. The Department will consider an appeal request as a statement of disagreement and the appeal decision as the rebuttal statement.
- The right to request confidential communications. The Department will accommodate any reasonable request by a client to have protected health information communicated to the client by alternative means or at alternative locations. Department health plans need to agree to a confidential communication only if necessary to protect the client from endangerment.

• The right to request restrictions on uses and disclosures. The amendments do not limit the circumstances under which a request can be made. The Department will approve a request for restriction when use or disclosure otherwise would endanger the client.

• The right to a list or “accounting” of disclosures made on or after April 14, 2003. The Department is not required to include on the list disclosures based on a client’s authorization; disclosures for treatment, payment, or health care operations; releases for national security purposes; and disclosures to correctional institutions or to other law enforcement custodial situations. All other requests must be acted upon within the time limits set out in federal regulations.

Requests to exercise these privacy rights must be in writing. HIPAA regulations allow the Department to charge a reasonable, cost-based fee:

- For copying and postage when the client requests a copy of protected health information.
- For costs of preparation when the client agrees in advance to a summary or explanation of the information.
- When the Department gives the client more than one accounting of disclosures in a 12-month period.

Historically, the Department has allowed local offices and facilities to charge fees in similar circumstances, such as when a client requests a copy of information out of the client’s income maintenance case record.

HIPAA regulations provide various reasons for the Department to deny each of the requests, but the specific reason for the denial must be given to the client in writing. Clients may file a complaint with the Department’s Privacy Office or with the Secretary of Health and Human Services if they feel the Department has violated their privacy rights.

HIPAA regulations require the Department to provide a process for clients to register complaints about the Department’s policies and procedures or its compliance with HIPAA requirements. The Department has established that process in 441—subrule 9.14(6). Complaints will be handled by the Department’s Privacy Office. Clients may also file a complaint with the Secretary of the federal Department of Health and Human Services.

To ensure fairness, 441—subrule 9.14(7) and revisions to 441—Chapter 7 also provide an appeal process, through the normal channels, when clients are dissatisfied with the final decision on their request for restriction, confidential communication, access, amendment, or accounting. Clients must first exhaust any review or rebuttal rights provided through the HIPAA process. Then, if still dissatisfied with the decision, clients may request a hearing through the Department’s normal appeal process for contested cases found in 441—Chapter 7.

Chapter 9 is also amended to correct obsolete citations to the Iowa Code and to administrative rules, update references to the Department and other state agencies, and rescind policy providing for subscriptions to Department manuals. Due to budget and staff constraints, the Department no longer allows subscriptions to its manuals, nor does it furnish copies of manuals to individual staff members. The Department’s manuals are available on the Internet for use by staff and the public.

The chart in rule 441—9.11(22) that describes the availability of Department records is amended to add the Pharmaceutical and Therapeutics Committee records as partly open and partly confidential documents. The procedure to disclose such records is documented under rule 441—9.3(17A, 22).

These amendments do not provide for waivers in specified situations. The changes are technical in nature, are intended to benefit Department clients, and implement federal regulations that the Department does not have the authority to waive. Clients who believe themselves to be disadvantaged by these amendments may request an exception under the Department’s general rule at 441—1.8(17A, 217).

The Department finds that notice and public participation are impracticable and contrary to the public interest. Federal HIPAA law and implementing federal regulations on privacy of protected health information have been in effect since April 2003. The Department must comply with federal laws and regulations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2) and 441—subrule 3.10(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments made effective November 1, 2003. Federal HIPAA law and implementing regulations were written for the benefit of the public. Department clients will be more aware of their rights in regard to health information held by the Department.

The Council on Human Services adopted these amendments on October 8, 2003.

These amendments are also published herein under Notice of Intended Action as **ARC 2901B** to allow for public comment.

These amendments are intended to implement Iowa Code section 217.22; 2003 Iowa Acts, House File 619, section 3, as amended by 2003 Iowa Acts, Senate File 458, section 161; and Iowa Code chapter 22.

These amendments shall become effective November 1, 2003.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)** as follows:

Amend the definition of “aggrieved person” by adopting **new** numbered paragraph “**10**” as follows:

10. For HIPAA (Health Insurance Portability and Accountability Act) decisions, a current or former applicant or recipient of Medicaid or HAWK-I, or a person currently or previously in a department facility whose request:

- To restrict use or disclosure of protected health information was denied.
- To change how protected health information is provided was denied.
- For access to protected health information was denied.

When the denial is subject to reconsideration under 441—paragraph 9.9(1)“i,” persons denied access due to a licensed health care professional’s opinion that the information would constitute a danger to that person or another person must first exhaust the reconsideration process.

- To amend protected health information was denied.
- For an accounting of disclosures was denied.

Amend the definition of “reconsideration” as follows:

“Reconsideration” means a review process that must be exhausted before an appeal hearing is granted. ~~This includes~~ *Such review processes include*, but is ~~are~~ not limited to, a reconsideration request through the Iowa Foundation for Medical Care, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, Medicaid patient management services, the managed health care review committee, a division or bureau within the department, the mental health and developmental disabilities commission, ~~or~~ the child or adult abuse registry, *or a licensed health care professional as specified in 441— paragraph 9.9(1)“i.”* Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 2. Amend **441—Chapter 9**, preamble, by adopting the following **new** second and third unnumbered paragraphs:

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to August 14, 2002. These rules set forth the standards the department of human services must meet to protect the privacy of protected health information. The department has chosen to be considered a hybrid entity for purposes of HIPAA because there are parts of the department that are not part of the covered entity for purposes of HIPAA compliance.

The rules on protected health information apply only to those parts of the department that are considered part of the covered entity: the named health plans and health care providers defined in these rules and the divisions or programs that perform functions on behalf of a named health plan. Targeted case management, refugee services, and the child support recovery unit are examples of parts of the department that are not included in the covered entity.

ITEM 3. Amend rule **441—9.1(17A,22)** as follows:

Rescind the definition of “agency.”

Amend the definitions of “client,” “confidential record,” “custodian,” “mental health information,” “personally identifiable information,” “personal representative,” “record,” and “record system” as follows:

“Client” means a person who has applied for or received services or assistance from the ~~agency~~ *department*.

“Confidential record” means a record which is not available as a matter of right for examination and copying by

members of the public under applicable provisions of law. Confidential records include:

1. ~~records~~ *Records* or information contained in records that the ~~agency department~~ is prohibited by law from making available for examination by members of the public, and

2. ~~records~~ *Records* or information contained in records that ~~are~~ *is* specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Custodian” means the ~~agency department~~ or a person ~~lawfully delegated who has been given authority by the agency department~~ to act for the ~~agency department~~ in implementing Iowa Code chapter 22. For a local ~~or district of~~ *office*, the custodian is the ~~district administrator~~ *service area manager*. For a child support recovery office, the custodian is the regional administrator. For an institution, the custodian is the institution superintendent. For a central office unit, or for requests dealing with more than one ~~district service area~~, region, or institution, the custodian is the division ~~director administrator~~.

“Mental health information” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(7 8)) and which relates to the diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

“Personally identifiable information” means information about or pertaining to ~~an individual in the subject of~~ a record which identifies the ~~individual subject~~ and which is contained in a record system. The incidental mention of a ~~another person’s name in another person’s a subject’s~~ record (e.g., as employer, landlord, or reference) does not constitute personally identifiable information.

“Personal representative” is ~~means~~ *means* someone designated by another as standing in the other’s place or representing the other’s interests for one or more purposes. *The term “personal representative” includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of “personal representative” is more restrictive, as described at rule 441—9.15(17A,22).*

“Record” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of ~~this agency the department~~.

“Record system” means any group of records under the control of the ~~agency department~~ from which a record may be retrieved by a personal identifier such as the name of ~~an individual a subject~~, number, symbol, or other unique ~~retriever identifier~~ assigned to ~~an individual a subject~~.

Adopt the following **new** definitions in alphabetical order:

“Business associate” means a person or organization, other than a member of the department’s workforce, who meets one of the following criteria:

1. Performs, or assists in the performance of, a function or activity on behalf of the department which involves the use or disclosure of protected health information, including claims processing or administration, data analysis, research, utilization review, quality assurance, billing, benefit management, practice management, and repricing, or any other

HUMAN SERVICES DEPARTMENT[441](cont'd)

function or activity regulated by the rules on protected health information.

2. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the department. The provision of the service shall involve the disclosure of protected health information from the department or from another business associate of the department to the person or organization.

“Covered entity” means:

1. A health plan.
2. A health care clearinghouse.
3. A health care provider that transmits any health information in electronic form in connection with a transaction covered by the HIPAA regulations.

“Covered functions” means the functions performed by a covered entity which make the covered entity a health plan, health care clearinghouse, or health care provider.

“Data aggregation” means the action by which a business associate combines protected health information of the department with protected health information of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

“Department” means the Iowa department of human services.

“Designated record set” means a group of records maintained by or for the department that is:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, claims adjudication, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the HAWK-I program that are used, in whole or in part, by the HAWK-I program to make decisions about subjects.

For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for the department.

“Disclosure” means releasing, transferring, providing access to, or divulging in any other manner information outside the organization holding the information.

“Facility” or “facilities” means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Clarinda Mental Health Institute, Glenwood Resource Center, Independence Mental Health Institute, Mount Pleasant Mental Health Institute, and Woodward Resource Center.

“Health care” means care, services, or supplies related to the health of a subject. “Health care” includes, but is not limited to, the following:

1. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedures with respect to the physical or mental condition, or functional status, of a subject or affecting the structure or function of the body; and
2. Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

“Health care clearinghouse” means a public or private organization, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that performs either of the following functions:

1. Processes or facilitates the processing of health information received from another organization in a nonstandard

format or containing nonstandard data content into standard data elements or a standard transaction.

2. Receives a standard transaction from another organization and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving organization.

“Health care operations” has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. For a covered entity in the department, “health care operations” has the following meaning:

1. For Medicaid, “health care operations” means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessments and evaluating outcomes.
 - Developing clinical guidelines.
 - Improving general health or reducing costs.
 - Developing protocols, including case management and care coordination models for MediPASS and pharmacy case management as well as for other service areas and client populations under the Medicaid program.
 - Informing clients of treatment alternatives and related functions.
 - Reviewing competence or qualifications or performance of health care professionals using the surveillance and utilization review subsystem.
 - Reviewing health plan performance from encounter data.
 - Premium rating and rate setting.
 - Performing activities in reinsurance of risk with the health maintenance organizations.
 - Reviewing medical level of care and prior authorizations.
 - Obtaining legal services through the attorney general’s office or the county attorney’s office.
 - Cooperating in audits and fraud detection by Iowa and federal auditors, the fiscal agent, or the department of inspections and appeals.
 - Conducting business planning and development including formulary development by the drug utilization review commission and the department’s research and statistics staff.
 - Managing activities, which include claiming of federal financial participation by the department’s fiscal staff, recovering unknown third-party liability, recovering nursing care funds and other expenditures through estate recovery, grouper programming for hospitals, lock-in activities, and federal reporting of paid claims by the fiscal agent.
 - Providing customer service, which includes income maintenance workers answering questions about lock-in providers, copayment for pregnant women, and claims payment problems; and the fiscal agent providing customer service for claims payment.
 - Coordinating care and monitoring the effective delivery of child welfare services to ensure the safety and well-being of children, including reporting and providing testimony to the court of jurisdiction on the condition and service progress of a client receiving services from the department. These care coordination and monitoring activities include providing information concerning the client to attorneys representing the various parties in the court proceedings.
2. For the HAWK-I program, “health care operations” means any of the following activities of the department to the extent that the activities are related to covered functions:
- Conducting quality assessment and improvement activities, including evaluation of outcomes and development

HUMAN SERVICES DEPARTMENT[441](cont'd)

of clinical guidelines; population-based activities relating to improving health or reducing health care costs, protocol development and related functions that do not include treatment.

- Reviewing health plan performance.
 - Premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits.
 - Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
 - Performing business planning and development functions, such as conducting cost-management and planning analyses relating to management and operations and the development or improvement of methods of payment or coverage policies.
 - Performing business management and general administrative activities, including, but not limited to, management activities relating to implementation of and compliance with privacy requirements, customer service, and resolution of internal grievances.
3. For the facilities, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:
- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from these activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.
 - Reviewing the competence or qualifications of health care professionals.
 - Evaluating performance of practitioners, providers and health plans.
 - Conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.
 - Training of non-health care professionals.
 - Performing accreditation, certification, licensing, or credentialing activities.
 - Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
 - Performing business planning and development functions, such as conducting cost-management and planning analyses related to managing and operating the organization, including formulary development and administration, development or improvement of methods of payment or coverage policies.
 - Performing business management and general administrative activities, including, but not limited to, management activities related to implementation of and compliance with the requirements of HIPAA; customer service, which includes the provision of data analyses for policyholders, plan sponsors, or other customers, provided that protected health information is not disclosed to the policyholder, plan sponsor, or customer; resolution of internal grievances; and activities consistent with the applicable requirements of subrule 9.10(29) on creating de-identified health information or a limited data set.

"Health care provider" means a provider of services, as defined in Section 1861(u) of the Social Security Act and 42 U.S.C. 1395x(u); a provider of medical or health services, as defined in Section 1861(s) of the Social Security Act and 42 U.S.C. 1395x(s); and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. In the department, "health care provider" means one of the department's facilities.

"Health information" means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a subject; the provision of health care to a subject; or the past, present, or future payment for the provision of health care to a subject.

"Health maintenance organization (HMO)" means a public or private organization licensed as an HMO under the commerce department, insurance division, 191—Chapter 40.

"Health oversight agency" means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency, that is authorized by law to:

1. Oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance; or
2. Enforce civil rights laws for which health information is relevant.

The term "health oversight agency" includes the employees or agents of the public agency and its contractors or persons or organizations to which the agency has granted authority.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR 160.103 as amended to August 14, 2002. In the department, "health plan" means Medicaid or HAWK-I.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Law enforcement official" means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

"Payment," with respect to HIPAA rules about protected health information, has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. In the department, "payment" applies to subjects for whom health care coverage is provided under the Medicaid program or the HAWK-I program. "Payment" has the following meanings for these health plans:

1. For Medicaid, "payment" includes activities undertaken by this health plan to:
 - Determine or fulfill its responsibility for coverage and provision of benefits under the health plan.
 - Obtain or provide reimbursement for the provision of health care.
 - Determine eligibility, including spenddown for the medically needy program or obtaining premiums for the Medicaid for employed people with disabilities program, or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Perform risk adjustment of amounts due based on enrollee health status and demographic characteristics.

- Bill; manage claims; collect; obtain payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance; and conduct related health care data processing.

- Review health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.

- Perform utilization review activities, including pre-certification and preauthorization of services and concurrent and retrospective review of services.

2. For the HAWK-I program, "payment" includes activities undertaken by this health plan to:

- Obtain reimbursement or pay for providing health care services.

- Obtain premiums or determine or fulfill its responsibility for coverage and providing benefits. "Activities" include, but are not limited to, determinations of eligibility for coverage, including coordination of benefits or the determination of cost-sharing amounts; billing and collection activities; review of health care services with respect to coverage under a health plan; and utilization review activities.

"Plan sponsor" has the same definition as that stated in Section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

"Protected health information" means information that contains a subject's medical information, including past, present, or future treatment and payment information. "Protected health information" is a composite of multiple fields that grouped together give detailed accumulative information about a subject's health. When joined together in an accessible record set, the following three distinct areas of health-care-processing file information constitute protected health information:

1. Information that identifies the subject.
2. Medical information describing condition, treatment, or health care.
3. Health care provider information.

Identification information together with any information from one of the other two categories constitutes protected health information. When the information that identifies the subject is present in the record set, any information that ties health care data to the subject's identification information constitutes protected health information.

"Psychotherapy notes" means notes that are recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the subject's medical record. "Psychotherapy notes" excludes medication prescription and monitoring, counseling session start and stop times, the methods of therapy and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

"Public health authority" means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency that is responsible for public health matters as part of its official mandate. "Public health authority" includes the employees or agents of the public agency and its contractors or persons or organizations to which it has granted authority.

"Required by law" means a mandate contained in federal law, federal regulation, state law, state administrative rule, case law, or court order that is enforceable in a court of law. For the purposes of this chapter, "required by law" includes statutes or regulations that require the production of information, such as statutes or regulations that require the information if payment is sought under a government program that provides public benefits.

"Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

"Subject" means the person who is the subject of the record, whether living or deceased.

"Transaction" means the electronic transmission of information between two parties to carry out financial or administrative activities related to health care. The term includes the following defined HIPAA standard transactions:

- Health care claims or equivalent encounter information.
- Health care payment and remittance advice.
- Coordination of benefits.
- Health care claim status.
- Enrollment and disenrollment in a health plan.
- Eligibility for a health plan.
- Health plan premium payments.
- Referral certification and authorization.
- Other transactions that the Secretary of Health and Human Services may prescribe by regulation.

"Treatment," with respect to HIPAA rules about protected health information, means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation among health care providers about a patient; and the referral of a patient from one health care provider to another.

"Use," with respect to protected health information, means the sharing, application, utilization, examination, or analysis of the information within an organization that maintains the protected health information.

"Workforce" means employees, volunteers, trainees, and other people whose conduct, in the performance of work for the covered entity, is under the direct control of the covered entity, whether or not these people are paid by the covered entity.

ITEM 4. Amend rule 441—9.2(17A,22) as follows:

441—9.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound *agency department* determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This *agency department* is committed to the policies set forth in Iowa Code chapter 22. *agency Department* staff shall cooperate with members of the public in implementing the provisions of that chapter.

ITEM 5. Amend rule 441—9.3(17A,22) as follows:

Amend subrules 9.3(1), 9.3(5), and 9.3(6) as follows:

9.3(1) Location of record. A request for access to a record should be directed to the director or the particular *agency department* office where the record is kept.

a. If the location of the record is not known by the requester, the request shall be directed to the ~~Bureau Office~~ of Policy Analysis, Department of Human Services, ~~Hoover State Office Building~~, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. If a request for access to a record is misdirected, *agency department* personnel will promptly forward the request to the appropriate person within the *agency department*.

9.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from *agency department* files. Examination and copying of *agency department* records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) Copying. A reasonable number of copies of an open record may be made in the *agency's department* office. If photocopy equipment is not available in the *agency department* office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

Amend subrule **9.3(7)**, paragraphs "a," "b," and "c," as follows:

a. When charged. The *agency department* may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the *agency department* shall be prominently posted in *agency department* offices. Copies of records may be made by or for members of the public on *agency department* photocopy machines or from electronic storage systems at cost as determined and posted in *agency department* offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual *agency department* expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in *agency department* offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an *agency department* clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

Amend subrule **9.3(7)** by rescinding paragraph "e" and inserting the following new paragraph "e" in lieu thereof:

e. Summary of health information. The department may charge a fee for the cost of preparing an explanation or summary of health information as provided in paragraph 9.9(1)"c." The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

ITEM 6. Amend rule 441—9.4(17A,22) as follows:

Amend subrules 9.4(3) and 9.4(5) as follows:

9.4(3) Notice to subject of record and opportunity to obtain injunction.

a. Except as provided in 441—subrule 175.14(2) 175.41(2), after the custodian receives receiving a request for access to a confidential record, and before the custodian releases releasing such a the record, the custodian may make reasonable efforts to promptly notify promptly any person who is:

(1) Who is a subject of that record,

(2) Who is identified in that record, and

(3) whose Whose address or telephone number is contained in the record.

b. To the extent such a delay is practicable and in the public interest, the custodian may give the notified subject of such a confidential record to whom notification is transmitted a reasonable opportunity time to seek an injunction under Iowa Code section 22.8. The custodian shall inform and indicate to the subject of identified in the record the specific period of time during which disclosure will be delayed for that purpose of how much time the subject has to seek an injunction before the information will be released.

9.4(5) Request granted. Except as provided in 441—subrule 175.14(2) 175.41(2), when the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person the requester or the person who is to receive the information and indicate include any lawful restrictions imposed by the custodian limits on that person's the examination and copying of the record.

Amend subrule **9.4(6)**, paragraph "a," as follows:

a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.8(235A) 441—175.41(235A) and 441—175.9(235A) 441—175.42(235A).

ITEM 7. Amend rule 441—9.5(17A,22) as follows:

Amend subrules 9.5(2) and 9.5(3) as follows:

9.5(2) Request. A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

a. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests for treatment of to temporarily treat a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, accompany the request with provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the *agency department* by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

9.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the *agency department* does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

Adopt the following new subrule 9.5(7):

9.5(7) Rights to request privacy protection for protected health information. When the subject is requesting a restriction or confidential communication of protected health information, the department shall follow the provisions of this subrule, as applicable, in addition to the provisions of subrules 9.5(1) through 9.5(6).

a. Restriction of uses and disclosures.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The subject may request that the department restrict uses or disclosures of the subject's protected health information:

1. To carry out treatment, payment, or health care operations; and

2. To persons involved in the subject's care or for notification purposes as permitted under subrule 9.7(3).

(2) The subject shall submit a request to the department on Form 470-3953, Request to Restrict Use or Disclosure of Health Information. If applicable, the subject shall provide verification that it is reasonable to anticipate the use or disclosure will endanger the subject.

(3) The department is not required to agree to a restriction. The department shall deny any restriction when the restriction would adversely affect the quality of the subject's care or services, the restriction would limit or prevent the department from making or obtaining payment for services, or federal or state law requires the use or disclosure. The department shall approve the request for restriction only when the use or disclosure would endanger the subject and none of the above reasons for denial apply.

(4) The department shall send the subject a written notice to accept or deny the restriction.

(5) If the department agrees to a restriction, it may not use or disclose protected health information in violation of the restriction. **EXCEPTION:** The department may use restricted protected health information or disclose the information to a health care provider when needed for the emergency treatment of the subject who requested the restriction. If restricted protected health information is disclosed to a health care provider for emergency treatment, the department shall request that the health care provider not further use or disclose the information.

(6) A restriction agreed to by the department under paragraph 9.5(7)“a” shall not prevent disclosures of protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations. Also, a restriction shall not prevent uses or disclosures permitted or required for the categories listed in subparagraphs 9.14(5)“a”(1) through (11).

(7) The department may terminate its agreement to a restriction in writing if:

1. The subject agrees to or requests the termination in writing;

2. The subject orally agrees to the termination and the oral agreement is documented; or

3. The department informs the subject that it is ending its agreement to a restriction for protected health information created or received after it has so informed the subject.

b. Confidential communications. Subjects may ask to receive communications of protected health information by alternative means or at alternative locations. The department shall accommodate reasonable requests. For Medicaid and HAWK-I, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

(1) The subject shall request a confidential communication from the department using Form 470-3947, Request to Change How Health Information Is Provided.

(2) The department may require the subject to provide:

1. When appropriate, information as to how payment, if any, will be handled; and

2. An alternative address or other method of contact.

ITEM 8. Amend rule 441—9.6(17A,22) as follows:

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) *All programs.* Except as otherwise provided by law, a ~~person~~ *subject* may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that ~~person~~ *subject*. However, ~~this does the subject is not authorized~~ *authorize a person who is a subject of such a record to alter the original copy of that the record or to expand the official record of any agency department proceeding.*

a. ~~Requester~~ *The subject* shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the ~~bureau~~ *office* of policy analysis.

b. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the ~~requester~~ *subject*, and shall include the current address and telephone number of the ~~requester~~ *subject* or the ~~requester's~~ *subject's* representative.

9.6(2) *Additional procedures for protected health information.*

a. *Right to amend.* A subject may request that the department amend protected health information or a record about the subject in a designated record set for as long as the protected health information is maintained in the designated record set. A subject shall submit a request to the department using Form 470-3950, Request to Amend Health Information. The subject shall provide a reason to support the requested amendment.

b. *Timely action.*

(1) The department shall act on a subject's request for an amendment no later than 60 days after receipt of the request.

(2) If the department is unable to act on the amendment within 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall provide this written statement within the 60-day period after receipt of the request.

c. *Action on amendment.* If the department grants the requested amendment, in whole or in part, the department shall comply with the following requirements.

(1) The department shall timely inform the subject that the amendment is accepted. The subject shall identify relevant persons with whom the amendment needs to be shared and agree to have the department share the amendment with these persons.

(2) The department shall make the appropriate amendment to the protected health information or record by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(3) The department shall make reasonable efforts to inform and provide the amendment to:

1. Persons identified by the subject as having received protected health information about the subject and as needing the amendment; and

2. Persons, including business associates, that the department knows have the subject's protected health information and that may have relied, or could foreseeably rely, on the information to the detriment of the subject.

d. *Denial of amendment.* The department may deny a subject's request for amendment, if the department deter-

HUMAN SERVICES DEPARTMENT[441](cont'd)

mines that the protected health information or record that is the subject of the request:

(1) *Was not created by the department, unless the subject provides a reasonable basis for the department to find that the originator of the protected health information is no longer available to act on the requested amendment;*

(2) *Is not part of the designated record set;*

(3) *Would not be available for inspection under rule 441—9.9(17A,22); or*

(4) *Is accurate and complete.*

e. Action on denial of amendment. If the department denies the requested amendment, in whole or in part, the department shall provide the subject with a timely, written denial.

(1) *The subject may submit to the department a written statement of disagreement with the denial of all or part of a requested amendment and the basis of the disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The subject shall submit the statement of disagreement by filing an appeal request under subrule 9.14(7). The appeal request constitutes the statement of disagreement.*

(2) *The department shall prepare a written rebuttal to the subject's statement of disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The appeal decision constitutes the rebuttal statement. The department shall provide a copy of the appeal decision to the subject who submitted the appeal request.*

f. Record keeping of disputed amendments. The department shall, as appropriate, identify the record or protected health information in the designated record set that is the subject of the disputed amendment. The department shall append or otherwise link the subject's request for an amendment, the department's denial of the request, and the subject's appeal and the final decision, if any, to the designated record set.

g. Future disclosures regarding disputed amendments.

(1) *If an appeal has been submitted by the subject, the department shall include the material appended in accordance with paragraph 9.6(2)"f" or, at the election of the department, an accurate summary of the information, with any subsequent disclosure of the protected health information to which the disagreement relates.*

(2) *If the subject has not submitted an appeal, the department shall include the subject's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of the protected health information only if the subject has requested this action.*

(3) *When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included with the disclosure, the department may separately transmit the material required by subparagraph 9.6(2)"g"(1) or (2), as applicable, to the recipient of the standard transaction.*

h. Actions on notices of amendment. When the department is informed by another covered entity of an amendment to a subject's protected health information, the department shall amend the protected health information in designated record sets as provided by subparagraph 9.6(2)"c"(2).

ITEM 9. Amend rule 441—9.7(17A,22,228) as follows:

Amend the introductory paragraphs as follows:

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify

the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity.

No confidential information about clients of the agency department shall be released without the client's consent, except as provided in rule 441—9.10(17A,22). Release of information includes:

1. Granting access to or allowing the copying of a record,

2. Providing information either in writing or orally, or

3. Acknowledging information to be true or false.

Amend subrule 9.7(1) as follows:

Amend paragraphs "a" to "d" as follows:

a. General. *Department staff shall use Form 470-2115, Authorization for the Department to Release Information, is to be used for releases by the subject that do not involve mental health or substance abuse health information requiring use of the authorization form described in paragraph 9.7(1)"c."*

b. Obtaining information from a third party. *The agency department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the agency department may make these requests only when the client has authorized the release on one of the following forms.*

1. Form PA-2206-0 470-0461, Authorization for Release of Information.

2. Form 470-1630, Household Member Questionnaire.

3. Form 470-1631, Financial Institution Questionnaire.

4. Form 470-1632, Landlord Questionnaire.

5. Form 470-1638, Request for School Verification.

6. Form 470-2844, Employer's Statement of Earnings.

7. Form 470-1640, Verification of Educational Financial Aid.

8. Form 470-2531, Consent of Disclosure 470-3742, Financial Institution Verification.

9. Form 470-3951, Authorization to Obtain or Release Health Care Information.

c. ~~Mental health and substance abuse Health information.~~

(1) *When consent or authorization for use or disclosure of health information is required, facilities and department staff responding to third-party requests for health information shall use Form 470-3951, Authorization to Obtain or Release Health Care Information, or a form from another source that meets HIPAA requirements.*

The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment.

A subject may revoke a HIPAA authorization provided under subparagraph 9.7(1)"c"(1) at any time, provided that the revocation is in writing using Form 470-3949, Request to End an Authorization, except to the extent that the department has taken action in reliance thereon.

(2) *Except as provided in subparagraph 9.7(1)"c"(1), department staff shall release Mental mental health or sub-*

HUMAN SERVICES DEPARTMENT[441](cont'd)

stance abuse information ~~can be released~~ only with authorization on Form ~~MH-2201-0 470-0429~~, Consent to Release or Obtain and Release Information, or a form from another source that meets requirements of law.

d. *Photographs and recordings.* The *agency department* uses Form ~~Adm-4113-0 470-0060~~, Authorization to Take and Use Photographs, and Form ~~Adm-4118-0 470-0064~~, Authorization to Take and Use Photographs of Minor or Ward, for permission to use photographs in *agency department* publications. *The department shall obtain authorization from the subject or person responsible for the subject (such as a guardian, custodian, or personal representative) before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.*

Rescind paragraph "e."

Amend subrule 9.7(2) as follows:

9.7(2) Exceptions to use of forms.

a. *Counsel.* Appearance of counsel before the *agency department* on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the *agency department* to disclose records about that person ~~the subject to the person's subject's attorney.~~

b. *Public official.* A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the *agency department* shall be treated as an authorization to release information. The *agency department* shall release sufficient information about the subject to the official to resolve the matter.

c. *Medical emergency.* *Agency Department* staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

d. No change.

Rescind subrule 9.7(3) and adopt the following **new** subrule in lieu thereof:

9.7(3) Opportunity for subject to agree or object. This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object, unless this requirement is waived as specified in paragraph 9.7(3)"e."

a. *Involvement in the subject's care.* The department may disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

- (1) A family member;
- (2) Another relative;
- (3) A close personal friend of the subject; or
- (4) Any other person identified by the subject.

b. *Notification purposes.* The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3)"f."

c. *Uses and disclosures with the subject present.* If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

- (1) Obtains the subject's agreement;
- (2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or
- (3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. *Informing the subject.* The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. *Limited uses and disclosures when the subject is not present.* When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. *For disaster relief purposes.* The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3)"b." The requirements in paragraphs 9.7(3)"c" and "d" apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

ITEM 10. Amend rule 441—9.8(17A,22) as follows:

441—9.8(17A,22) Notice to suppliers of information. When the *agency department* requests a person to supply information about that person, the *agency department* shall notify the person of the use that will be made of how the information will be used, which persons outside the *agency department* might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested.

9.8(1) This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

9.8(2) The notice shall generally be given at the first contact with the *agency department* and need not be repeated at every following contact. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of an ~~agency a department~~ investigation.

9.8(3) In general, the *agency department* requests information to determine eligibility and benefit levels for assistance, to provide appropriate services or treatment, and to perform regulatory and administrative functions. Information is routinely shared outside the *agency department* when

HUMAN SERVICES DEPARTMENT[441](cont'd)

required by rules or law. Consequences of failure to provide information include ineligibility for public assistance, denial of licensure or regulatory approval, or inadequate service provision.

ITEM 11. Amend rule 441—9.9(17A,22) as follows:

441—9.9(17A,22) Release to subject.

9.9(1) Access by subjects to protected health information.

a. *Right of access.* Except as otherwise provided in paragraphs 9.9(1)“f” and “g,” a subject has a right of access to inspect or to obtain a copy of the protected health information about the subject that is maintained in a designated record set. Subjects shall submit all requests for access to the department using Form 470-3952, Request for Access to Health Information.

If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

b. *Timely action.*

(1) The department shall act on a request for access no later than 30 days after receipt of the request unless the protected health information is not maintained or accessible to the department on site.

(2) If the requested information is not maintained or accessible to the department on site, the department shall take action no later than 60 days from the receipt of the request.

(3) If the department is unable to act within 30 days or 60 days as appropriate, the department may extend the time for the action by no more than 30 days. Within the applicable time limit, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall have only one extension of time for action on a request for access.

c. *Action on providing access.* If the department grants the request, in whole or in part, the department shall inform the subject that the request is accepted and shall provide the access requested. Access includes inspecting the protected health information about the subject in designated record sets, obtaining a copy of the information, or both. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the department need only produce the protected health information once in response to a request for access.

(1) The department shall provide the subject with access to the protected health information in the form or format requested by the subject, if the requested format is readily producible. If the requested format is not readily producible, the department shall provide the information in a readable hard-copy form or other format as agreed to by the department and the subject.

(2) The department may provide the subject with a summary of the protected health information requested instead of providing access to the protected health information. The department may provide an explanation of the protected health information to which access has been provided. The subject must agree in advance to a summary or explanation and to any fees imposed by the department for the summary or explanation.

d. *Time and manner of access.* The department shall provide the access as requested by the subject in a timely manner as described in paragraph 9.9(1)“b.” The department shall arrange with the subject for a time and place to

inspect or obtain a copy of the protected health information that is convenient for both the subject and the department, or shall mail the copy of the protected health information at the subject's request. The department may discuss the scope, format, and other aspects of the request for access with the subject as necessary to facilitate the timely provision of access.

e. *Fees for access.* If the subject requests a copy of the protected health information or agrees to a summary or explanation of the information, the department may impose a reasonable, cost-based fee, as set forth in subrule 9.3(7).

f. *Mandatory reasons for denial of access.* The department shall deny a subject access to protected health information when the requested information is:

(1) Psychotherapy notes;

(2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or

(3) Protected health information maintained by the department that is:

1. Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. Section 263a, to the extent the provision of access to the subject would be prohibited by law; or

2. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).

g. *Optional reasons for denial of access.* The department may deny a subject access in the following circumstances.

(1) The department may temporarily suspend a subject's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment. The subject must have agreed to the denial of access when consenting to participate in the research that includes treatment. The suspension may last for as long as the research is in progress. The department shall inform the subject that the right of access will be reinstated upon completion of the research.

(2) The department may deny a subject's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. Section 552a, if the denial of access under the Privacy Act would meet the requirements of that law.

(3) The department may deny a subject's access if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(4) State or federal law prohibits a subject's access to protected health information, such as the state law limitations described in subrule 9.9(2).

(5) The department may deny a subject access, provided that the subject is given a right to have the denials reviewed as required by paragraph 9.9(1)“i,” in the following circumstances:

1. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the subject or another person;

2. The protected health information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person; or

3. The request for access is made by the subject's personal representative, subject to the more restrictive definition of

HUMAN SERVICES DEPARTMENT[441](cont'd)

personal representative for protected health information, and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to the personal representative is reasonably likely to cause substantial harm to the subject or another person.

h. Action on denial of access. If the department denies access, in whole or in part, to protected health information, the department shall comply with the following requirements.

(1) The department shall, to the extent possible, give the subject access to any other protected health information requested, after excluding the protected health information to which the department has a reason to deny access.

(2) The department shall provide a timely, written denial to the subject, in accordance with paragraph 9.9(1)“b.”

i. Review of denial of access. If access is denied for a reason permitted under subparagraph 9.9(1)“g”(5), a subject may submit a written request for a review of a denial. If the subject requests a review, the department shall promptly refer the request to a licensed health care professional who is designated by the department to act as a reviewing official and who did not participate in the original decision to deny.

(1) The designated reviewing official shall determine, within 30 days, whether or not to deny the access requested based on the standards in subparagraph 9.9(1)“g”(5).

(2) The department shall promptly provide written notice to the subject of the determination made by the designated reviewing official and shall take other action as required to carry out the designated reviewing official's determination.

9.9(2) Access by subjects to other confidential information. The agency department shall release confidential records to the subject of the record. However, when a record has multiple subjects with interest in the confidentiality of the record, the agency department may take reasonable steps to protect confidential information relating to another subject. The agency department need not release the following records to the subject:

1 a. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

2 b. The identity of a person reporting suspected abuse to the agency department need not be disclosed to the subject. (See rule 441—175.8(235A) 441—subrule 175.41(2) and Iowa Code section 235A.19.)

3 c. The identity of a person providing information to the agency department need not be disclosed directly or indirectly to the subject of the information when that information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

4 d. Peace officers' investigative reports may be withheld from the subject, pursuant to Iowa Code section 22.7(5).

5 e. The agency department may withhold disclosure of confidential information when the agency department has reason to believe that disclosure of the information would cause substantial and irreparable harm and would not be in the public interest. The agency department may withhold disclosure to seek an injunction to restrain examination of the record according to procedures in Iowa Code section 22.8 or to notify the person who would be harmed to allow that person to seek an injunction.

6 f. The agency department may withhold information as otherwise authorized by law.

ITEM 12. Amend rule 441—9.10(17A,22) as follows:

Amend the introductory paragraph as follows:

441—9.10(17A,22) Disclosure Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by

law, the agency department may also use and disclose confidential information without the consent of the subject or the subject's representative.

Amend subrules 9.10(1) through 9.10(10) and 9.10(12) as follows:

9.10(1) Internal use. Confidential information may be disclosed to employees and agents of the agency department as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

People affected by this rule include:

1. County-paid staff, field work students, and volunteers working under the direction of the agency department.

2. Council and commission members.

3. Policy review and advisory committees.

4. Consultants to the agency department.

9.10(2) Audits and health oversight activities.

a. Audits. Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branch branches who are responsible for assuring ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. Health oversight activities. The department shall disclose protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(1) Except as specified in paragraph 9.10(2)“c,” the department may also use protected health information, or disclose it to a health oversight agency, for other health oversight activities authorized by law. Health oversight activities include audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

1. The health care system;

2. Government benefits programs for which protected health information is relevant to client eligibility;

3. Organizations subject to government regulatory programs for which protected health information is necessary for determining compliance with program standards; or

4. Organizations subject to civil rights laws for which protected health information is necessary for determining compliance.

(2) If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation shall be considered a health oversight activity for purposes of subrule 9.10(2).

c. Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph 9.10(2)“b,” a health oversight activity shall not include an investigation or other activity in which the subject is also the subject of the investigation or activity, unless the investigation or other activity directly relates to:

(1) The receipt of health care;

(2) A claim for public health benefits; or

(3) Qualification for or receipt of public benefits or services, when a patient's health is integral to the claim for public benefits or services.

9.10(3) Program review. Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the agency department is operating a program lawfully. This includes These officials include the citizens' aide office under Iowa Code sec-

HUMAN SERVICES DEPARTMENT[441](cont'd)

tion 601G.9 2C.9, and the legislative fiscal bureau under Iowa Code section 2.52 the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) Agreements Contracts and agreements with other agencies and persons.

a. The agency department may enter into contracts or agreements with public or private agencies, such as the department of inspections and appeals or, and business associates, such as but not limited to, the Medicaid fiscal agent, in order to carry out the agency's department's official duties. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The agency department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to individuals persons on the basis of need. Only information collected in the aid to dependent children family investment program, the child care assistance program, the food stamp assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the agency department has entered into agreements with the Iowa department of employment services workforce development, the United States Internal Revenue Service, and the United States Social Security Administration.

The agency department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for aid to dependent children the family investment program, refugee cash assistance, child care assistance, food stamps assistance, medical assistance Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these people programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the agency department has entered into an agreement with the Bureau of Citizenship and Immigration and Naturalization Service (INS BCIS). to exchange Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for aid to dependent children the family investment program, refugee cash assistance, food stamps assistance, medical assistance Medicaid, state supplementary assistance and foster care assistance. Identifying information regarding these people subjects is released to the INS BCIS. The information received may be used for eligibility and benefit determination determinations.

e. The agency department has entered into an agreement with the department of workforce development under which the agency will to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the agency depart-

ment of workforce development, as well as with the agency's its subcontractors.

The department has entered into an agreement with the department of human rights to provide services to family investment program clients participating in the family development and self-sufficiency program as described at 441—Chapter 165. Information necessary to carry out these duties shall be shared with the department of human rights, as well as with that agency's subcontractors.

f. No change.

g. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

h. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program.

When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) Release to court for judicial and administrative proceedings. Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.74 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.4 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the agency department is prohibited from releasing, the agency department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) Fraud. Information concerning suspected fraud or misrepresentation to obtain agency department services or assistance is disclosed to the department of inspections and appeals and to law enforcement authorities.

9.10(7) Service referrals. Information concerning clients may be shared with purchase of service providers under contract to the agency department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the agency department.

b. When the information needed by the provider is mental health information or substance abuse information, the client's subject's specific consent is required in subrule 9.3(4).

9.10(8) Medicaid billing. Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the sub-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ject and is unable to complete the Medicaid claim form without it:

- a. Patient identification number.
- b. Health coverage code as reflected on the subject's medical card.
- c. The subject's date of birth.
- d. The subject's eligibility status for the month that the service was provided.
- e. *The amount of spenddown.*
- f. *The bills used to meet spenddown.*

9.10(9) County billing. Information necessary for billing is released to county governments that pay part of the cost of care for local purchase services under rule 441—150.6(234), intermediate care facility services for the mentally retarded under subrule 82.14(2), or Medicaid waiver services under rule 441—83.9(249A) 441—83.70(249A) or 441—83.90(249A). This information includes client names, identifying numbers, provider names, number of days of care, amount of client payment, and amount of payment due.

9.10(10) Child support recovery. The child support recovery unit has access to information from most agency department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—95.12(252B).

9.10(12) Abuse investigation. The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively dependent adult abuse information as provided in 441—Chapter 176. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71 232.71B and 235B.1 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(5 2) and 235A.15(2)“j.” “b”(5).

Adopt **new** subrule 9.10(15) as follows:

9.10(15) Disclosures to law enforcement.

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.
2. Date and place of birth.
3. Social security number.
4. ABO blood type and Rh factor.
5. Type of injury.
6. Date and time of treatment.
7. Date and time of death, if applicable.
8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of

criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

Amend subrules 9.10(17), 9.10(18), and 9.10(19) as follows:

9.10(17) Research. Information that does not identify individual clients may be disclosed for research purposes with the consent of the division director administrator responsible for the records. The division director administrator shall investigate the credentials of the researcher.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code section 228.5, subsection 3, and section 229.25. Requests to do research involving records of an agency institution a department facility shall be approved by the research committee of that institution designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.9(235A) 441—175.42(235A) and 441—176.11(235B) and authorized by Iowa Code sections 235A.15(2)“f” 235A.15(2)“e”(1) and 235B.1(4)“a” 235B.6(2)“e”(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) ~~Imminent harm~~ Threat to health or safety.

a. All programs. A client's name, identification, location, and details of a client's threatened or actual harm to agency department staff or property may be reported to law enforcement officials. Other information regarding the client's relationship to the agency department shall not be released.

When an agency a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client's plan of harm shall be disclosed.

b. Protected health information. The department may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the department, in good faith, believes the use or disclosure:

(1) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(2) Is necessary for law enforcement purposes as described in this chapter.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. When the department uses or discloses protected health information pursuant to paragraph 9.10(18)“b,” the department is considered to have acted in good faith if the action is based on the department’s actual knowledge or on a credible representation by a person with apparent knowledge or authority.

9.10(19) Federal requirements Required by law.

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services. A determination is made by the Secretary of Health and Human Services under 45 CFR 160.204 as amended to August 14, 2002, that the provision of state law:

1. Is necessary:

- *To prevent fraud and abuse related to the provision of or payment for health care;*
- *To ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation;*

- *For state reporting on health care delivery or costs; or*
- *For purposes of serving a compelling need related to public health, safety, or welfare, and, if a requirement under this chapter is at issue, the Secretary of Health and Human Services determines that the intrusion into privacy is warranted when balanced against the need to be served; or*

2. Has as its principal purpose, the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances, as defined in 21 U.S.C. 802, or that is deemed a controlled substance by state law.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of “more stringent” found at 45 CFR 160.202 as amended to August 14, 2002.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

Adopt **new** subrules 9.10(21) through 9.10(29) as follows:

9.10(21) Treatment, payment, or health care operations.

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as described in this paragraph, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21)“b.” The use or disclosure shall be consistent with other applicable requirements of this chapter.

(1) The department may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) The department may disclose protected health information for treatment activities of a health care provider.

(3) The department may disclose protected health information to another covered entity or a health care provider for the payment activities of the person or organization that receives the information.

(4) The department may disclose protected health information to another covered entity for health care operations activities of the covered entity that receives the information, if each covered entity either has or had a relationship with the person who is the subject of the protected health information being requested, the protected health information pertains to the relationship, and the disclosure is:

1. For a purpose listed in numbered paragraph “1” or “2” of the definition of health care operations in 45 CFR 164.501 as amended to August 14, 2002; or

2. For the purpose of health care fraud and abuse detection or compliance.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department’s compliance with federal HIPAA regulations.

(3) For health oversight activities, as described at subrule 9.10(2), with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described at subrule 9.10(18).

(5) When required by law as described at subrule 9.10(19).

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described at subrule 9.10(24).

9.10(22) Public health activities. The department may disclose protected health information for the public health activities and purposes described in this subrule. This disclosure is in addition to any other disclosure to a public health authority allowed by this chapter, such as a disclosure to report child abuse or neglect. For the purposes of this subrule, a public health authority includes state and local health departments, the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention.

a. The department may disclose protected health information to a public health authority that is authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.

(1) The information that may be disclosed includes, but is not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

(2) At the direction of a public health authority, the department may also report this information to an official of a foreign government agency that is acting in collaboration with a public health authority.

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. The department may disclose protected health information to a person or organization that is subject to the jurisdiction of the FDA for public health purposes related to the quality, safety, or effectiveness of an FDA-regulated product or activity for which that person or organization has responsibility. These purposes include:

(1) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product).

(2) To track FDA-regulated products.

(3) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying subjects who have received products that have been recalled, withdrawn, or are the subject of lookback).

(4) To conduct postmarketing surveillance.

c. The department may disclose protected health information to a person who is at risk of contracting or spreading a disease or condition. The disclosure must be necessary to carry out public health interventions or investigations or to notify a person that the person has been exposed to a communicable disease to prevent or control the spread of the disease.

9.10(23) Victims of domestic violence. The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(24) Disclosures to coroners, medical examiners, and funeral directors.

a. Coroners and medical examiners. The department may disclose protected health information about a subject that is contained in the designated record set to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.

b. Funeral directors. The department may disclose protected health information about a subject that is contained in the designated record set to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the department may disclose the protected health information before, and in reasonable anticipation of, the subject's death.

9.10(25) Disclosures for cadaveric organ, eye or tissue donation purposes. The department may disclose protected health information about a subject that is contained in the designated record set to organ procurement organizations or other organizations engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. The department shall make a disclosure only when the disclosure has been approved by the deceased subject's authorized legal representative and there is evidence that the decedent had given approval for organ, eye, or tissue donation procedures before the decedent's death.

9.10(26) Specialized government functions. Protected health information may be shared under the circumstances described at 45 CFR 164.512, paragraph "k," as amended to August 14, 2002, if otherwise allowable under state law, such as sharing protected health information with the Social Security Administration in determining Medicaid eligibility for supplemental security income applicants and recipients.

9.10(27) Whistle blowers. The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate

has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(28) Secondary to a use or disclosure of protected health information. The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(29) De-identified data or a limited data set.

a. De-identified information. The department may use or disclose protected health information to create information that is de-identified under the conditions specified in 45 CFR 164.514, paragraphs "a" through "c," as amended to August 14, 2002.

b. Limited data set. The department may use or disclose a limited data set under the conditions specified at 45 CFR 164.514, paragraph "e," as amended to August 14, 2002, when the department enters into a data use agreement for research, public health, or health care operations.

ITEM 13. Amend rule 441—9.11(22) as follows:

441—9.11(22) Availability of records. This rule lists the *agency department* records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Agency Department records are listed by category according to the legal basis for confidential treatment (if any). A single record may contain information from several categories.

The *agency department* administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as are required for receipt of the funds. Where federal authority is cited in this rule, the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the *agency department*.

The chart indicates whether the records in this category contain personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations are used in the chart as follows:

<u>Code</u>	<u>Meaning</u>
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

HUMAN SERVICES DEPARTMENT[441](cont'd)

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of council, commission and statutory committees	O/C	Iowa Code 21.5(4)	No	NA
<i>Pharmaceutical and therapeutics committee records (including information related to the prices manufacturers or wholesalers charge for pharmaceuticals)</i>	O/C	<i>42 U.S.C. §1396r(8)(b)(3)(D) and Iowa Code 550</i>	No	NA
Rule making	O	NA	No	NA
Declaratory ruling order records	O/C	Iowa Code 217.30	No	NA
Rules and policy manuals	O	NA	No	NA
State plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical reports	O	NA	No	NA
Financial and administrative records	O	NA	No	NA
Personnel records	O/C	Iowa Code 22.7(11)	Yes	Iowa Code 217.1
Contracts and interagency agreements	O	NA	No	NA
Grant records				
• Child abuse prevention	O	NA	No	NA
• Domestic abuse	O	NA	No	NA
• Displaced homemaker	O	NA	No	NA
• Mental health/mental retardation general allocation	O	NA	No	NA
• Mental health/mental retardation special allocation	O	NA	No	NA
• Developmental disabilities basic	O	NA	No	NA
• Alcohol/drug abuse/mental health block	O	NA	No	NA
• National Institute of Mental Health	O	NA	No	NA
• Gamblers assistance	O	NA	No	NA
• Pregnancy prevention	O	NA	No	NA
• Juvenile community-based services	O	NA	No	NA
• Runaway prevention	O	NA	No	NA
Collection service center payment records	O	NA Iowa Code 252B.9(2)	Yes	Iowa Code 252B.13, 252B.9, 252B.13A, 252B.16
Licensing, registration and approval				
• Juvenile detention and shelter care facilities	O/C	Iowa Code 217.30	No	NA
• Adoption investigators	O	NA	Yes	Iowa Code 600.2
• Supervised apartment living arrangement	O	NA	No	NA
• Mental health providers	O	NA	No	NA
• Family-life homes	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Foster care facilities	O/C	Iowa Code 237.9	Yes	Iowa Code 237
• Day Child care facilities	O/C	Iowa Code 237A.7	Yes	Iowa Code 237A
• Child-placing agencies	O/C	Iowa Code 238.24	No	NA
• Health care facilities	O/C	Iowa Code 135C.19	No	NA
Appeal records	O/C	Iowa Code 217.30	Yes	Iowa Code 217.1
Litigation files	O/C	Iowa Code 217.30, 22.7(4), 622.10	Yes	Iowa Code 217.1

HUMAN SERVICES DEPARTMENT[441](cont'd)

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Service provider records				
• Purchase of service providers	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Medicaid providers	O/C	Iowa Code 217.30, 42 U.S.C. 1396a(7), 42 CFR 431.300 to 307 as amended to October 1, 1987 November 13, 1996	Yes	Iowa Code 249A.4
• Residential care facilities	O/C	Iowa Code 217.30	No	NA
All service or assistance client records	C	Iowa Code 217.30	Yes	Iowa Code 217.1
• Aid to Dependent Children Family investment program	C	Iowa Code 217.30; 42 U.S.C. §602(a) (9 I) and §1306a; 45 CFR 205.50 as amended to Oct. 1, 1987	Yes	Iowa Code 239 239B
• Child care assistance	C	Iowa Code 237A.13	Yes	Iowa Code 237A
• State supplementary assistance	C	Iowa Code 217.30	Yes	Iowa Code 249
• Medicaid	C	Iowa Code 217.30; 42 U.S.C. §1396a(7); 42 CFR 431.300 to 307 as amended to October 1, 1987 November 13, 1996	Yes	Iowa Code 249A.4
• HAWK-I	C	Iowa Code 514I; 42 CFR 457.1110 as amended to January 11, 2001	Yes	Iowa Code 514I.4
• Food Stamps assistance	C	Iowa Code 217.30; 7 U.S.C. §2020(e)8 and 7 CFR 272.1 (c) and (d) as amended to January 1, 1987	Yes	Iowa Code 234.6
• Foster care	C	Iowa Code 237.9	Yes	Iowa Code 237.3 to 237.5
• Title IV-E foster care and adoption assistance	C	Iowa Code 217.30; 42 U.S.C. §671(a)(8); 45 CFR 1355.30(1); as amended to Oct. 1, 1986 November 23, 2001	Yes	Iowa Code 217.1, Iowa Code 600.17 to 600.22
• Refugee resettlement	C	Iowa Code 217.30; 45 CFR 400.27 as amended to October 1, 1987 March 22, 2000	Yes	Iowa Code 217.1
• Substance abuse	C	Iowa Code 125.37 and 125.93; 42 U.S.C. §29 dd. 3 and ee. 3; 42 CFR § Part 2; as amended to October 1, 1987 2002; 38 U.S.C. §4132	Yes	Iowa Code Chapters 125, 218, 219 and 234.6 and 249A.4
• State institution resident records	C	Iowa Code 218.22, 229.24 and 229.25	Yes	Iowa Code 218.1
Program records				
• Child support recovery	O/C	Iowa Code 252B.9 and 252G.5; 45 CFR §303.21, as amended to October 1, 1987 42 U.S.C. §654(26), 42 U.S.C. §654a(d)	Yes	Iowa Code Chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 598, and 600B, 252I, 252J, 252K, and Iowa Code 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A
• Child abuse	C	Iowa Code 235A.13, 235A.15, 235A.16, and 235A.17	Yes	Iowa Code 235A.14
• Dependent adult abuse	C	Iowa Code 235B.1, par 4(a)	Yes	Iowa Code 235B.1
• Adoption	C	Iowa Code 600.16 and 600.24	Yes	Iowa Code 600.8 and 600.16
Client records may contain information from restricted sources:				
• Federal tax returns	C	Iowa Code 422.20(2); 26 U.S.C. §6103	Yes	Iowa Code 217.1, 234.6(7), 239 239B, 249A, 252B
• Department of revenue and finance	C	Iowa Code 421.17, 422.20(1)	Yes	Iowa Code 252B.5 and 252B.9

HUMAN SERVICES DEPARTMENT[441](cont'd)

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Department of Employment Services <i>workforce development</i>	C	Iowa Code 217.30; 42 U.S.C. §503(d) and (e)	Yes	Iowa Code 217.1, 234.6(7), 239 239B, 249A, 249C, 252B.9
• Income and eligibility verification system	C	Iowa Code 217.30; 42 U.S.C. §1230 b-7	Yes	Iowa Code 217.1, 234.6(7), 239 239B, 249A
• Department of public safety	C	Iowa Code 692.2, 692.3, 692.8 and 692.18	Yes	Iowa Code 237.8, 237A.5, 252B.9
• U.S. Department of Health and Human Services	C	Iowa Code 217.30; 42 CFR § <i>Part</i> 401.134(c); as amended to October 1, 1987 2002	Yes	Iowa Code 217.1, 234.6(7), 239 239B, 249, 249A, 252B
• Peer review organization	C	Iowa Code 217.30; 42 U.S.C. §1320c-9	Yes	Iowa Code 249A.4
• Juvenile court	C	Iowa Code 232.48, 232.97 and 232.147 to 232.151	Yes	Iowa Code 232 and 234.6
Other information				
• Mental health information	C	Iowa Code 228.2(1)	Yes	Iowa Code 217, 219, 222, 229
• Information received by a licensed social worker	C	Iowa Code 154C.5	Yes	Iowa Code 217.1
• Debtors to the department	C	Iowa Code 537.7103(3)	Yes	Iowa Code 217.1
• Health care facility complaint and citation records	C	Iowa Code 135C.19	No	Iowa Code 249A.4, 135C.19
• Hospital records, medical records, and professional counselor records	C	Iowa Code 22.7(2)	Yes	Iowa Code 218, 219, 222, 229
• Privileged communication and work products of attorneys representing the department	C	Iowa Code 22.7(4), Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA
• Identity of volunteer informant who does not consent to release	C	Iowa Code 22.7(18)	No	Iowa Code 217.1
• School records	C	Iowa Code 22.7(1)	Yes	Iowa Code 218.1 and 234.6
• Library circulation records	C	Iowa Code 22.7(13) and (14)	No	Iowa Code 217.1
• Sealed bids prior to public opening	C	Iowa Code 72.3	No	NA
• <i>Protected health information</i>	C	HIPAA	Yes	<i>Iowa Code 218.1, 249A.4, 514I.4</i>

ITEM 14. Amend rule 441—9.12(22,252G) as follows:

Amend subrule 9.12(1) as follows:

Amend the introductory paragraph as follows:

9.12(1) Nature and extent. The personally identifiable information collected by the ~~agency department~~ varies by the type of record. The nature and extent of personally identifiable information is described below:

Amend paragraph “a,” introductory paragraph and subparagraphs (1), (3), (4), (5), and (6), as follows:

a. Recipients of assistance. Several different types of ~~agency department~~ records contain personally identifiable information about recipients of assistance programs such as food stamps assistance, Medicaid, aid to dependent children the family investment program, child care assistance, state supplementary assistance, refugee cash and medical assistance, and commodity supplemental foods.

(1) Client case file. Local office case files contain identifying information, demographic information, household composition, and income and resource information about applicants for and recipients of assistance, as well as any other persons whose circumstances must be considered in determining eligibility. Records may contain information about employment, disability, or social circumstances. Records identify the kind and amount of benefits received and what proof was obtained to verify the recipient’s eligibility. Case

files contain correspondence, appeal requests and decisions, and documentation of ~~agency department~~ actions.

(3) Data processing systems. Client identifying information, eligibility data, and payment data are kept in the ~~automated benefit calculation (ABC) system following systems. Records connected with particular programs are also kept in the child support collections and recovery system, the intermediate care facility eligibility and payment system, the overpayment and recoupment system, the Medicaid eligibility system, the medically needy spenddown control system, the Medicare buy-in system, the third-party health insurance coverage system, and the quality control system.~~ Some of these records are also kept on microfiche.

<u>System</u>	<u>Function</u>
<i>Automated Benefit Calculation System</i>	<i>Determines eligibility for FIP, food assistance, and Medicaid</i>
<i>Automated Child Abuse and Neglect System</i>	<i>Inactive child abuse/neglect system</i>
<i>Appeals Logging and Tracking System</i>	<i>Tracks client appeals</i>
<i>BCCT Program</i>	<i>Establishes Medicaid eligibility for breast and cervical cancer clients</i>

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>System</u>	<u>Function</u>
Change Reporting System	Tracks client-reported changes and produces forms needed for client-reported changes
Diversion System	Tracks clients using diversion benefits
Electronic Payment Processing and Inventory Control System	Electronically issues food assistance
Eligibility Tracking System	Tracks clients' FIP eligibility and hardship status
Family and Children's Services System	Tracks foster care, adoption, family-centered and family preservation services
Food Stamps Case Reading Application	Food assistance accuracy tool used to record case reading information
Health Insurance Premium Payment System	Health insurance premium payment
Iowa Collection and Reporting System	Tracks child support recovery processes
Iowa Central Employee Registry	Child support new hire reporting system
Iowa Eligibility Verification System	Federal social security number verification and benefits
Iowa Plan Program	Assigns group codes for Iowa Plan clients
Individualized Services Information System	Used to establish facility eligibility, process data to and from ABC and Medicaid fiscal agent, establish waiver services, providers, and eligibility
Issuance History	Displays benefit issuances for FIP and food assistance
KACT System	Authorizes foster care service units
MEPD Premium Payment Program	Accounting system for billing and payment for Medicaid for employed people with disabilities program
Managed Health Care Program	Assigns managed health care providers to clients
Medicaid Management Information Systems	
Medicaid Fiscal Agent System	Processes clients' Medicaid claims
Medicaid Eligibility System	Assigns Medicaid coverage to clients
Overpayment Recoupment System	Used to recover money from FIP, Food Assistance, Medicaid, Child Care Assistance, PROMISE JOBS, and HAWK-I clients
Public Information Exchange	Data exchange between states
PJCASE	Iowa Workforce Development interface with PROMISE JOBS
Purchase of Social Services System	Purchased services (mostly child care and in-home health clients)
Presumptive Eligibility Program	Establishes Medicaid eligibility for presumptive eligibility clients
Quality Control System	Selects sample for quality control review of eligibility determination
RTS Claims Processing System	Processes rehabilitative treatment claims for federal match
State Data Exchange Display	State data exchange information for supplemental security income recipients

<u>System</u>	<u>Function</u>
Social Security Buy-In System	Medicare premium buy-in
Social Services Reporting System	Services reporting system for direct and purchased services
Statewide Tracking of Assessment Reports	Tracks child abuse reports

(4) Quality control records. Files are developed on selected clients containing data required to verify the correctness of agency department eligibility and benefit decisions for selected clients.

(5) Appeals. Records containing client eligibility and payment information are created by the department of inspections and appeals when a client (or, for Medicaid, a provider) requests a hearing on an agency department action.

(6) Fraud. When fraud is suspected of a client is suspected of fraud, the department of inspections and appeals generates an investigative record is generated by the department of inspections and appeals containing information pertinent to the circumstances of the case.

Amend paragraph "b," introductory paragraph and subparagraphs (1), (5), (7), and (8), as follows:

b. Recipients of social services. Several kinds of agency department records contain personally identifiable information about applicants for and recipients of direct or purchased social services.

(1) Client case records. Local offices create client case files containing identifying information and demographic information; income data; information substantiating the need for services, which may include medical, psychological or psychiatric reports; social history; the agency department evaluation of the client's situation; documentation of agency department actions; and provider reports. Records may contain court orders and reports.

(5) Adoption records. The bureau of adult, children, and family services department keeps a master card file on all adoptions in Iowa as required in Iowa Code section 235.3, subsection 7. This record is also kept on microfilm.

The Iowa Adoption Exchange contains records on special needs children available for adoption and on families that have indicated an interest in adopting special needs children.

The bureau department also keeps records on adoptions in which the agency it has provided services. These files include the home study, information about the child, and legal documents. These records are also kept on microfiche.

(7) Interstate compact records. The bureau of adult, children, and family services department maintains records on placement of children across state lines. These records contain identifying information about the children and the conditions of their placement, as well as progress reports. Some of the records are kept on microfiche.

(8) Guardianship records. The bureau of adult, children, and family services department maintains records on all children under the its guardianship of the agency. The records concern the children's characteristics and placements. Some of these records are kept on microfiche.

Amend paragraph "e" as follows:

e. Collection services center. The collection services center maintains records of support orders issued or filed in Iowa after April 1, 1987, and support orders filed in counties that have been converted to the collection services center system. These records identify the person paying and the person receiving support, specify the support obligations, and contain a record of payments made. Most records are on an automated data processing system. Paper records may also be

HUMAN SERVICES DEPARTMENT[441](cont'd)

kept, including conversion documents, orders, and correspondence.

Amend paragraphs “g” and “h” as follows:

g. Regulatory files on individual providers. Files on ~~individuals~~ *persons* who apply to be licensed, certified, registered, or approved by the ~~agency~~ *department* contain identifying information, a description of the person’s operation or premises, ~~an agency and a department~~ evaluation of the information collected. Files may contain data on criminal records and abuse registry records on the ~~individual person~~ and any employees. Files may contain information naming clients served (for example, in complaints or incident reports). Some of these records are also kept on microfilm.

h. Personnel files. The ~~agency~~ *department* maintains files containing information about employees, families and dependents, and applicants for paid or volunteer positions within the ~~agency~~ *department*. The files contain payroll records, biographical information, medical information pertaining to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding and information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

Amend subrule 9.12(2) as follows:

Amend paragraph “a,” introductory paragraph and subparagraph (2), as follows:

a. Internal. All data processing systems operated by the ~~agency~~ *department* which have comparable personally identifiable data elements permit the matching of personally identifiable information. (See subrule 9.12(1) for a description of these systems.) Matches which are routinely done include the following:

(2) The automated benefit calculation system matches with the Medicaid eligibility system, the facility payment system, the child support collections system, ~~the employment and training systems, the food stamp issuance electronic payment processing and inventory control system, the eligibility tracking system, the Medicare buy-in system, the individualized services information system-waiver payment system, and the income eligibility and verification system.~~

Amend paragraph “b,” subparagraphs (1), (3), (5), and (8), as follows:

(1) The state data exchange matches information on ~~agency~~ *department* clients with records on recipients of supplemental security income.

(3) The income and eligibility verification system matches information on ~~agency~~ *department* clients with income records from department of employment ~~services~~ *workforce development* records on unemployment compensation and wages, tax records from the Internal Revenue Service, wage records and social security benefit records from the Social Security Administration, and public assistance records from other states.

(5) Data on ~~agency~~ *department* clients is matched with ~~records on workers’ compensation from the industrial commission, with the administering agency for the Job Training Partnership Workforce Investment Act, and with private agencies working to help employers collect benefits under the targeted jobs work opportunity tax credit program.~~

(8) A list of applicants for and recipients of the family investment program (FIP), the ~~family medical assistance program (FMAP), FMAP-related medical assistance~~ *Medicaid program*, and the food stamp assistance program is matched with records on Iowa motor vehicle registration files to assist in the identification of countable resources.

Amend paragraph “c,” introductory paragraphs and subparagraphs (1), (2), and (6), as follows:

c. Centralized employee registry (CER) database. The CER receives data concerning employees and contractors who perform labor in Iowa. Information reported by Iowa employers about employees includes the employee’s name, address, social security number, date of birth, beginning date of employment, whether health insurance is available, and when it may be available. Information reported by Iowa income payers about contractors is limited to the contractor’s name, address, social security number, and date of birth, if known.

State agencies accessing the CER shall participate in proportionate cost sharing for accessing and obtaining information from the registry. Cost sharing shall include all costs of performing the match including costs for preparing the tapes and central processing unit time. Costs shall be specified in a 28E agreement with each agency. CER matches include the following—~~Data data~~ matches with:

(1) The child support collections and reporting system for the establishment and enforcement of child and medical support obligations.

(2) Other ~~DHS~~ *department of human services* systems for the purpose of gathering additional information and verification for use in the determination of eligibility or calculation of benefits.

(6) The department of inspections and appeals for the recoupment of debts owed to ~~DHS~~ *the department of human services*.

ITEM 15. Amend rule 441—9.13(217) as follows:

Amend subrules 9.13(2) and 9.13(3) as follows:

9.13(2) Distribution prohibited. The ~~agency~~ *department* shall not distribute materials such as holiday greetings, general public announcements, voting information, and alien registration notices.

9.13(3) Distribution permitted. The ~~agency~~ *department* may distribute materials directly related to the health and welfare of clients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

ITEM 16. Adopt the following **new** rule 441—9.14(17A,22):

441—9.14(17A,22) Special policies and procedures for protected health information.

9.14(1) Minimum necessary. When using or disclosing protected health information or when requesting protected health information from another covered entity, the department shall make reasonable efforts, as described in paragraphs 9.14(1)“a” through “e,” to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

a. This requirement does not apply in the following circumstances:

(1) Disclosures to or requests by a health care provider for treatment.

(2) Uses or disclosures made to the subject.

(3) Uses or disclosures made pursuant to an authorization.

(4) Disclosures made to the Secretary of Health and Human Services.

(5) Uses or disclosures that are required by law.

(6) Uses or disclosures that are required for compliance with this chapter.

b. The department shall take the following actions:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Identify those persons or classes of persons, as appropriate, in its workforce who need access to protected health information to carry out their duties.

(2) For each person or class of persons, identify the category or categories of protected health information to which access is needed and any conditions appropriate to the access.

(3) Make reasonable efforts to limit the access of these persons or classes.

c. For any type of disclosure that it makes on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the amount of the protected health information disclosed to that reasonably necessary to achieve the purpose of the disclosure.

For all other disclosures, the department shall develop criteria designed to limit the protected health information disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought. The department shall review requests for disclosure on an individual basis in accordance with the criteria.

The department may rely, if reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

(1) Making permitted disclosures to a public official, provided the public official indicates that the information requested is the minimum necessary for the stated purposes;

(2) The information is requested by another covered entity; or

(3) The information is requested for the purpose of providing professional services to the department by a professional who is a workforce member or business associate of the department if the professional indicates that the information requested is the minimum necessary for the stated purpose.

d. Minimum necessary requests.

(1) When requesting information from other covered entities, the department shall limit any request for protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made.

(2) For a request that is made on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(3) For all other requests, the department shall develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made and to review requests for disclosure on an individual basis in accordance with the criteria.

e. For all uses, disclosures, or requests to which the minimum necessary requirements apply, the department shall not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

9.14(2) Uses and disclosures for premium rating and related purposes. If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if the health insurance or health benefits are not placed with the health plan, the health plan shall not use or disclose the protected health information for any other purpose, except as may be required by law.

9.14(3) Verification and documentation.

a. Before any disclosure of protected health information, the department shall obtain verification or documentation as follows:

(1) Verify the identity of a person requesting protected health information and the person's authority to access protected health information, if the department does not know the identity or authority of the person. This requirement is waived for disclosures to persons involved in the subject's care or for notification purposes, as described at subrule 9.7(3).

(2) Obtain any oral or written documentation, including statements and representations, from the person requesting the protected health information when this is a condition of the disclosure under this chapter.

b. The following constitute appropriate verification or documentation, if reasonable under the circumstances:

(1) Documentation, statements, or representations. The department may rely on documentation, statements, or representations that, on their face, meet the applicable requirements.

(2) Identity of public officials. When disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify identity:

1. In-person presentation of an agency identification badge, other official credentials, or other proof of government status.

2. A written request on the appropriate government letterhead.

3. A written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes the person is acting on behalf of the public official.

(3) Authority of public officials. When the disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify authority:

1. A written statement of the legal authority under which the information is requested.

2. If a written statement would be impracticable, an oral statement of the legal authority.

3. An order issued by a judicial or administrative tribunal.

(4) Exercise of professional judgment. The requirements of this subrule are met if the department relies on the exercise of professional judgment in use or disclosure to persons involved in the subject's care or for notification purposes, in accordance with subrule 9.7(3), or acts on a good-faith belief in making a disclosure to avert a serious threat to health or safety, in accordance with subrule 9.10(18).

9.14(4) Notice of privacy practices for protected health information. A subject has a right to adequate notice of the uses and disclosures of protected health information that may be made by the department, and of the subject's rights and the department's legal duties with respect to protected health information.

9.14(5) Right to receive an accounting of disclosures. Within the limits described in this subrule, a subject has a right to receive an accounting of the disclosures of protected health information listed in paragraph 9.14(5)"a," including disclosures to or by business associates of the department. A subject shall request an accounting using Form 470-3985, Request for a List of Disclosures.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Disclosures that may be included in an accounting. A subject's right to receive an accounting of disclosures made by the department, or to or by business associates of the department, is limited to the following disclosures that do not require an authorization or an opportunity for the subject to agree or object:

- (1) For health oversight activities described at subrule 9.10(2).
- (2) For judicial and administrative proceedings described at subrule 9.10(5).
- (3) For law enforcement purposes described at subrule 9.10(15).
- (4) For averting a threat to health or safety described at subrule 9.10(18).
- (5) To meet requirements of law described at subrule 9.10(19).
- (6) For public health activities described at subrule 9.10(22).
- (7) For disclosures about suspected victims of domestic violence described at subrule 9.10(23).
- (8) For disclosures about suspected victims of abuse or neglect described in 441—Chapter 9.
- (9) To coroners, medical examiners, and funeral directors described at subrule 9.10(24).
- (10) For cadaveric organ, eye, or tissue donation described at subrule 9.10(25).
- (11) For specialized government functions described at subrule 9.10(26), except those made for national security or intelligence purposes.
- (12) By whistle blowers as described at subrule 9.10(27).

b. Content of the accounting. The department shall provide the subject who submits Form 470-3985, Request for a List of Disclosures, with a written accounting of disclosures that meets the following requirements.

- (1) The accounting shall include disclosures of protected health information that occurred during the six years (or the shorter time requested by the subject) before the date of the request. However, disclosures that occurred before April 14, 2003, are not included in an accounting.
- (2) Except for limitations regarding multiple disclosures to the same person or organization, the accounting shall include for each disclosure:
 1. The date of the disclosure.
 2. The name of the organization or person who received the protected health information and, if known, the address of the organization or person.
 3. A brief description of the protected health information disclosed.
 4. A brief statement of the purpose of the disclosure that reasonably informs the subject of the basis for the disclosure or, instead of the statement, a copy of the written request for a disclosure.
- (3) If, during the period covered by the accounting, the department has made multiple disclosures of protected health information to a person or organization requesting a disclosure, the accounting may, with respect to the multiple disclosures, provide:
 1. The information required by subparagraph 9.14(5)“b”(2), for the first disclosure during the accounting period;
 2. The frequency, periodicity, or number of the disclosures made during the accounting period; and
 3. The date of the last disclosure during the accounting period.

c. Time limits for providing the accounting. The department shall act on the subject's request for an accounting no later than 60 days after receipt of a request, as follows:

- (1) The department shall provide the subject with the accounting requested; or
- (2) If the department is unable to provide the accounting within these 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department shall provide the accounting. The department shall provide this written statement within the 60-day period after receipt of the request for an accounting.
- d. Fee for accounting. The department shall provide to a subject one accounting without charge in any 12-month period. The department may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same subject within the 12-month period, as set forth in subrule 9.3(7), provided that the department:
 - (1) Informs the subject in advance of the fee; and
 - (2) Provides the subject with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

e. Suspension of right. The department shall temporarily suspend a subject's right to receive an accounting of disclosures made to a health oversight agency or law enforcement official, as permitted in this chapter, if the agency or official provides the department with a statement that the accounting would likely impede the agency's activities and specifies the time for which a suspension is required.

- (1) If the agency or official statement is submitted in writing, the department shall suspend the right to receive accounting for the time specified by the agency or official.
- (2) If the agency or official statement is made orally, the department shall:
 1. Document the statement, including the identity of the agency or official making the statement;
 2. Temporarily suspend the subject's right to an accounting of disclosures subject to the statement; and
 3. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless the agency or official statement is submitted in writing during that time.

9.14(6) Complaint procedure. A person who believes the department is not complying with the rules on protected health information or with the applicable requirements of 45 CFR Part 160 as amended to August 14, 2002, or with the applicable standards, requirements, and implementation specifications of 45 CFR of Subpart E of Part 164 as amended to August 14, 2002, may file a complaint with the department's privacy office or with the Secretary of Health and Human Services.

a. Complaints to the department's privacy office shall be in writing and may be delivered personally or by mail to the DHS Privacy Office, 1305 E. Walnut Street, First Floor, Des Moines, Iowa 50319-0114. Complaints regarding facilities may be sent to the applicable facility.

b. Complaints to the Secretary of Health and Human Services shall be made using the procedures set forth in 45 CFR 160.306 as amended to August 14, 2002.

9.14(7) Appeal rights.

a. If the subject disputes a decision by the privacy officer, the department's designated licensed health care professional, or the facility administrator on any of the following requests, the subject may appeal the decision in accordance with 441—Chapter 7.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) A request for restriction on use or disclosure of protected health information.

(2) A request for confidential communication of protected health information.

(3) A request for access to protected health information.

(4) A request to amend protected health information.

(5) A request for accounting of disclosures.

b. The privacy officer or facility shall assist the subject in making the appeal, if needed.

c. Appeals shall be:

(1) Mailed to the Appeals Section, Fifth Floor, Iowa Department of Human Services, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; or

(2) Submitted electronically at www.dhs.state.ia.us/appeals.asp.

9.14(8) Record retention. Notwithstanding any other department rule to the contrary, protected health information shall be retained for at least six years from the date of creation or the date when the information last was in effect, when required by 45 CFR 164.530, paragraph “j,” as amended to August 14, 2002.

ITEM 17. Adopt the following **new** rule 441—9.15(17A,22):

441—9.15(17A,22) Person who may exercise rights of the subject.

9.15(1) Adults. When the subject is an adult, including an emancipated minor, the subject’s rights under this rule may also be exercised by the subject’s legal or personal representative, except as provided in subrule 9.15(3).

9.15(2) Minors. Within the limits of subrule 9.15(3), when the subject is an unemancipated minor, the subject’s rights under this rule shall be exercised only by the subject’s legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.15(3) Exceptions.

a. Scope of authority. Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject’s ability to make health care decisions and receive protected health information. For example, court-appointed conservators and protective payees appointed by the department shall have access to and authority to release only the following information:

(1) Name and address of subject.

(2) Amounts of assistance or type of services received.

(3) Information about the economic circumstances of the subject.

b. Mental health information. Only an adult subject or a subject’s legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject’s age or condition.

d. Failure to act in good faith. If the department has reason to believe that the legal or personal representative is not

acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. Abuse, neglect, and endangerment situations. Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject’s personal representative if:

(1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or

(2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. Protected health information. A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. Deceased subjects. If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject’s estate, the department shall treat that person as a personal representative.

h. Other. If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

ITEM 18. Amend **441—Chapter 9**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 17A.3, 22.11, 217.6 and 217.30, and Iowa Code chapters 228 and 252G, and the *Health Insurance Portability and Accountability Act of 1996*.

ITEM 19. Amend **441—Chapter 13** as follows:

Strike “239” and insert “239B” wherever it appears.

Strike “239.6” and insert “239B.4” wherever it appears.

ITEM 20. Amend subrule **13.5(4)**, paragraph “b,” subparagraph (7), as follows:

(7) Authorization for Release of Information, Form ~~PA-2206-0 470-0461~~, used whenever it is necessary to verify information which is not covered by a specific release in order to establish the correctness of eligibility and payment.

ITEM 21. Amend subrule 28.12(1) as follows:

28.12(1) Information defined by statute as confidential concerning current or former patients or residents of the mental health institutes or hospital-schools shall not be released to a person, agency or organization, ~~who~~ *that* is not authorized by law to have access to the information, unless the patient or resident authorizes the release. Authorization shall be given by using Form ~~MH-2201-0 470-3951~~, *Authorization to Obtain or Release Health Care Information*.

ITEM 22. Amend subrule 75.22(10) as follows:

75.22(10) Confidentiality. The department shall protect the confidentiality of persons participating in the program in accordance with Iowa Code section 141A.9. When it is necessary for the department to contact a third party to obtain information in order to determine initial or ongoing eligibility, a Consent to Release ~~or Obtain and Release~~ Information, Form 470-0429, shall be signed by the recipient authorizing the department to make the contact.

ITEM 23. Amend subrule **93.109(2)**, paragraph “c,” as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. The FIA may incorporate a self-sufficiency plan which the family has developed with another agency or person, such as, but not limited to, Head Start, public housing authorities, child welfare workers, and FaDSS grantees, so long as that self-sufficiency plan meets the requirements of these rules and is deemed by PROMISE JOBS staff to be appropriate to the family circumstances. Participants shall authorize PROMISE JOBS to obtain the self-sufficiency plan and to arrange coordination with the manager of the self-sufficiency plan by signing Form ~~MH-2201-0~~ 470-0429, Consent to ~~Release or Obtain and Release~~ Information.

ITEM 24. Amend subrule **93.111(1)**, paragraph “a,” subparagraph (4), as follows:

(4) Participants shall have the option of substituting for assessment I assessment information which they have completed with another agency or person such as, but not limited to, ~~WIA the department of workforce development~~, Head Start, public housing authorities, child welfare workers, and family development services. Participants shall authorize PROMISE JOBS to obtain these assessment results by signing Form 470-0429, Consent to ~~Release or Obtain and Release~~ Information. To be used in place of assessment I, the assessment results must contain all or nearly all of the items from paragraph **93.111(1)**“a” ~~above~~ and must have been completed within the past 12 months.

ITEM 25. Amend subrule 93.135(4), introductory paragraph, as follows:

93.135(4) Employment verification. When the information is not available from any other source, participants shall verify scheduled and actual hours of employment at the time that employment begins and on a monthly basis thereafter. Participants may use employer statements, ~~or~~ copies of pay stubs, or may sign Form ~~MH-2201-0~~ 470-0429, Consent to ~~Release or Obtain and Release~~ Information, so that the employer may provide information directly to the PROMISE JOBS worker.

[Filed Emergency 10/10/03, effective 11/1/03]
[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2894B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment extends limited Medicaid eligibility for “expanded specified low-income Medicare beneficiaries” for six months. People in this 100 percent federally funded coverage group have income between 120 percent and 135 percent of the federal poverty guidelines (\$898 to \$1011 per month for a one-person household). Coverage is limited to payment of Medicare Supplemental Medical Insurance (Part B) premiums only (\$58.70 per month). Federal funding for this coverage group was scheduled to expire on September 30, 2003, but has been extended through March 31, 2004, in H. R. 3146, signed by President Bush on October 1, 2003.

Since the Department does not have funding to continue this coverage without federal support, the Department adopted rules to end coverage under this group effective with the expiration of federal funding. An amendment to subrule 75.1(36), which was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2402B**, implemented the termination date. This amendment delays the termination for six months to allow eligible recipients to take advantage of the extension in federal funding authorized by H. R. 3146.

This amendment does not provide for waivers in specified situations because it confers a benefit on people eligible for benefits under this group.

The Department finds that notice and public participation are impracticable because the rule must be changed in order to continue coverage that had previously been terminated. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date is waived.

The Council on Human Services adopted this amendment on October 8, 2003.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment became effective October 10, 2003.

The following amendment is adopted.

Amend subrule 75.1(36), introductory paragraph, as follows:

75.1(36) Expanded specified low-income Medicare beneficiaries. ~~Through From October 1, 2003, through September 30 March 31, 2003 2004~~, Medicaid benefits to cover the cost of the Medicare Part B premium shall be available to persons who are entitled to Medicare Part A provided the following conditions are met:

[Filed Emergency 10/10/03, effective 10/10/03]
[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2885B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of 2003 Iowa Acts, House File 534, sections 4 and 30, the Administrative Services Department hereby rescinds 401—Chapter 7, “Purchasing Procedures for State Agencies,” 401—Chapter 8, “Special Rules for the Acquisition of Data Processing Equipment, Services, or Software,” and 401—Chapter 9, “Centralized Purchasing,” and adopts 11—Chapter 105, “Procurement of Goods and Services of General Use,” Iowa Administrative Code.

The new chapter is adopted to support implementation of a new state electronic purchasing system that streamlines agency processes, reduces paperwork, and provides vendors the means to conduct business electronically with the state. The rules eliminate requirements for the use of paper forms and establish new policy governing electronic purchasing processes. The content of 401—Chapters 7, 8 and 9 is simplified and reorganized in new Chapter 105. 401—Chapters 7, 8 and 9 are rescinded.

These rules describe the methods state agencies will use to acquire goods and services of general use. The proposed rules do not make substantive changes to state policy for competitive procurement methods, standard contract requirements, agency guidelines, or vendor responsibilities and rights, with the following exceptions:

1. Additional methods of competitive selection are allowed, such as a best and final offer process, reverse auction and vendor prequalification.
2. A definition of “responsible bidder” is added for use in a vendor selection process when price is not the only consideration.
3. Rules relating to the procurement of architectural and engineering services are added.
4. Effective July 1, 2004, the threshold for direct agency purchasing will increase from \$2,500 to \$5,000.
5. New rules are included to support electronic procurement and an on-line vendor system.

11—Chapter 106, “Purchasing Standards for Service Contracts,” and 11—Chapter 107, “Uniform Terms and Conditions for Service Contracts,” provide additional requirements for service contracts. 471—Chapter 13, “Acquisition of Information Technology Devices and Services,” provides additional requirements for information technology purchases.

The waiver process set forth in 401—Chapter 20 applies to any request for waiver from these rules.

Notice of Intended Action was published in the August 20, 2003, Iowa Administrative Bulletin as **ARC 2708B**. A public hearing was held on the proposed rules on September 11, 2003, and other oral and written comments were received. After full and fair consideration of these comments and upon its own expertise, the Department has made the following principal changes to these rules:

- Several definitions were clarified. A definition of “limited scope” was added, including an example.
- The threshold for requiring formal competition was raised from \$5,000 to \$50,000 to match service contracting and other purchasing authorities. The formal competition threshold for construction remains at \$25,000.
- Additional details were added regarding purchases from Iowa Prison Industries.

- Reference to the statutory requirement to post requests for bids and proposals on the state Web site were added.

- Rules on sole source procurements, purchases from targeted small businesses, the best and final offer negotiation process, and use of the invitation for vendors to prequalify were clarified.

- The subrule on procurement of architectural and engineering services was extracted from the rule regarding other types of solicitations, so it exists as a separate rule which was reworded to specify that the Department shall determine whether an architect or engineer is competent and qualified and to specify that a fee proposal shall be requested only when the services required are of limited scope, limited duration or otherwise clearly defined.

The Department adopted these rules on October 7, 2003.

These rules will become effective for purchases made on or after December 3, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 534, sections 28, 29 and 30.

The following amendments are adopted.

ITEM 1. Rescind **401—Chapters 7, 8 and 9**.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 105
PROCUREMENT OF GOODS AND SERVICES
OF GENERAL USE

11—105.1(80GA, HF534) Applicability. Under the provisions of 2003 Iowa Acts, House File 534, these rules apply to the purchase of goods and services of general use by any unit of the state executive branch including a commission, board, institution, bureau, office, agency or department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies or instrumentalities of the state exempted by law.

Procurement of services shall also meet the provisions of Iowa Administrative Code, 11—Chapters 106 and 107.

Procurement of information technology devices and services shall also meet the requirements of Iowa Administrative Code, 471—Chapter 13.

105.1(1) The department and agencies shall follow procurement policies regardless of the funding source supporting the procurement. However, when these rules prevent the state from obtaining and using a federal grant, these rules are suspended to the extent required to comply with the federal grant requirements.

105.1(2) Notwithstanding other administrative rules, requirements for paper transactions in the procurement of goods and services shall be waived when an alternative electronic process is available. If the vendor is unable to use the electronic process, an alternative paper process will be made available.

11—105.2(80GA, HF534) Definitions.

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

2. The general assembly, or any office or unit under its administrative authority.

3. The judicial branch, as provided in Iowa Code section 602.1102.

4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"All or none" means an award based on the total for all items included in the solicitation.

"American-based business" means an entity that has its principal place of business in the United States of America.

"American-made product" means product(s) produced or grown in the United States of America.

"Award" means the selection of a vendor to receive a master agreement or order of a good or service.

"Bid specification" means the standards or qualities which must be met before a contract to purchase will be awarded and any terms which the director has set as a condition precedent to the awarding of a contract.

"Competent and qualified" means an architect or engineer who, at the sole discretion of the department, has the capability in all respects to satisfactorily perform the scope of services required by the proposed contract in a timely manner.

"Competitive bidding procedure" means the advertisement for, solicitation of, or the procurement of bids; the manner and condition in which bids are received; and the procedure by which bids are opened, accessed, accepted, rejected or awarded. A "competitive bidding procedure" refers to all types of competitive solicitation processes referenced in this chapter and may include a transaction accomplished in an electronic format.

"Competitive selection documents" means documents prepared for a competitive selection by a department or agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document a department or agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

"Department" means the department of administrative services.

"Director" means the director of the department of administrative services or the director's designee.

"Emergency" includes, but is not limited to, a condition:

1. That threatens public health, welfare or safety; or
2. In which there is a need to protect the health, welfare or safety of persons occupying or visiting a public improvement or property located adjacent to the public improvement; or

3. In which the department or agency must act to preserve critical services or programs or in which the need is a result of events or circumstances not reasonably foreseeable.

"Emergency procurement" means an acquisition resulting from an emergency need.

"Enterprise" means most or all state agencies acting collectively, unless it is used in a manner such as "state accounting enterprise," in which case it means the specific unit of the department of administrative services.

"Fair and reasonable price" means a price that is commensurate with the extent and complexity of the services to be provided and is comparable to the price paid by the department or other entities for projects of similar scope and complexity.

"Formal competition" means a competitive selection process that employs a request for proposals or other means

of competitive selection authorized by applicable law and results in procurement of a good or service.

"Good" or "goods" means products or personal property other than money that is tangible or movable at the time of purchase, including specially manufactured goods. A contract for goods is a contract in which the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods. When there is a contract for both goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the acquisition of goods, a contract for goods exists.

"Governmental entity" means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

"Informal competition" means a streamlined competitive selection process in which a department or agency makes an effort to contact at least three prospective vendors identified by the purchasing department or agency as qualified to perform the work described in the scope of work to request that they provide bids or proposals for the delivery of the goods or services the department or agency is seeking.

"Iowa-based business" means an entity that has its principal place of business in Iowa.

"Iowa product" means a product(s) produced or grown in Iowa.

"Life cycle cost" means the expected total cost of ownership during the life of a product, including disposal costs.

"Limited scope" means only a few specific services are required for a project. An example is a project for which all existing conditions and parameters are clearly evident or defined in a request for proposal, such as a project calling for development of specifications and bidding documents for replacement of an existing boiler.

"Lowest responsible bidder" means the responsible bidder that is fully compliant with the requirements and terms of the competitive selection document and that submits the lowest price(s) or cost(s).

"Master agreement" means a contract arrived at competitively which establishes prices, terms, and conditions for the purchase of goods and services in common use. Agencies may purchase from a master agreement without further competition. These contracts may involve the needs of one or more state agencies. Master agreements for a particular item or class of items may be awarded to a single vendor or multiple vendors.

"Newspaper of general circulation" means a newspaper meeting the definition set forth in Iowa Code section 618.3 as amended by 2003 Iowa Acts, House File 545, section 1.

"Order" means a direct purchase or a purchase from a state contract or master agreement.

"Procurement" or "purchase" means the acquisition of goods and services through lease, formal acceptance, contract, or obtaining title.

"Responsible bidder" means a vendor that has the capability in all respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the department may consider various factors including, but not limited to, the vendor's competence and qualification for the type of services required, the vendor's integrity and reliability, the past performance of the vendor relative to the quality of the good or service, the past experience of the department in relation to the good or service, the relative quality of the

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

good or service, the proposed terms of delivery, and the best interest of the state.

“Sealed” means the submission of responses to a solicitation in a form that prevents disclosure of the contents prior to a date and time established by the department for opening the responses. Sealed responses may be received electronically.

“Service” or “services” means work performed for an agency or its clients by a service provider. A contract for services is a procurement where the predominant factor, thrust, and purpose of the contract as reasonably stated is for services. When there is a mixed contract for goods and services, if the predominant factor, thrust, and purpose of the contract as reasonably stated is for service, with goods incidentally involved, a contract for services exists.

“Services of general use” means services that are not unique to an agency’s program or that are needed by more than one agency. This chapter applies to the purchase of services of general use.

“Sole source procurement” means a purchase of a good or service in which the department or agency selects a vendor without engaging in a competitive selection process.

“Targeted small business (TSB)” means a targeted small business as defined in Iowa Code section 15.102 that is certified by the department of inspections and appeals pursuant to Iowa Code section 10A.104 and as authorized by Iowa Code chapter 73.

“Vendor” means a person, firm, corporation, partnership, business or other commercial entity that provides services or offers goods for sale or lease.

“Vendor on-line system” means a state computer system that enables vendors to conduct business electronically with the state through an Internet location on the World Wide Web.

“Web” or “Web site” refers to an Internet location on the World Wide Web that provides information, communications, and the means to conduct business electronically.

11—105.3(80GA,HF534) Competitive procurement. It is the policy of the state to obtain goods and services from the private sector for public purposes to achieve value for the taxpayer through a competitive selection process that is fair, open, and objective. Where feasible, common use items will be purchased cooperatively with state agencies having independent procurement authority to leverage economies of scale, add convenience, standardize common items, and increase efficiencies.

105.3(1) Informal competition for procurement of goods. The department may use informal competition or formal competition for the purchase of any good or group of goods costing less than \$50,000.

105.3(2) Formal competition for procurement of goods. The department shall use formal competition for the procurement of any good or group of goods costing \$50,000 or more.

105.3(3) Construction procurement. Formal competition shall be used for selection of a vendor for construction, erection, demolition, alteration, or repair of a public improvement when the cost of the work exceeds \$25,000.

105.3(4) Purchasing services. Thresholds for the use of formal or informal competition for the procurement of services are governed by rule 11—106.5(80GA,HF534).

11—105.4(80GA,HF534) Exemptions from competitive procurement. The director or designee may exempt goods and services of general use from competitive procurement processes when the procurement meets one of the following conditions. All procurements that are exempt from competitive processes shall be recorded as such, and appropriate justification shall be maintained by the agency initiating the action.

Additional review and approvals are required.

105.4(1) Emergency procurement.

a. Justification for emergency procurement. An emergency procurement shall be limited in scope and duration to meet the emergency. When considering the scope and duration of an emergency procurement, the department or agency should consider price and availability of the good or service procured so that the department or agency obtains the best value for the funds spent under the circumstances. The department and agencies shall attempt to acquire goods and services of general use with as much competition as practicable under the circumstances.

b. Special procedures required for emergency procurements. Justification for the emergency purchase shall be documented and submitted to the director or designee for approval. The justification shall include the good or service that is to be or was purchased, the cost, and the reasons the purchase should be or was considered an emergency.

105.4(2) Targeted small business (TSB) procurement.

a. Justification for TSB procurement. Agencies may purchase from a TSB without competition for a purchase up to \$5,000.

b. Special procedures for TSB procurements. Agencies must confirm that the vendor is certified as a TSB by the department of inspections and appeals. An agency may contact the TSB directly.

105.4(3) Iowa Prison Industries (IPI) procurement.

a. Justification for IPI procurement. Agencies shall purchase products from IPI or obtain a written waiver in accordance with Iowa Code section 904.808. See <http://www.iaprisonind.com> for IPI catalog. Purchase of standard office modular components and other furniture items shall be in accordance with 11—subrule 100.6(6).

b. Special procedures for IPI purchases. An agency may contact IPI directly. When ordering from IPI, agencies shall issue the order through the state’s purchasing system.

105.4(4) Procurement based on competition managed by other governmental entities.

a. Justification for procurement based on competition managed by other governmental entities. The department may utilize a current contract, agreement, or purchase order issued by a governmental entity to establish an enterprise master agreement or make a purchase without further competition. The department may join a contract or agreement let by a purchasing consortium when the department reasonably believes it is in the best interest of the enterprise and reasonably believes the contract, agreement, or order was awarded in a fair and competitive manner.

b. Special procedures for procurement based on competition managed by other governmental entities. The department shall notify the other governmental entity and the requesting agency of its intent to use a contract, agreement, or purchase order prior to procuring the good or service in this manner.

105.4(5) Sole source procurement.

a. Justification for sole source procurement. A sole source procurement shall be avoided unless clearly necessary and justifiable. The director or designee may exempt the purchase of a good or service of general use from competitive selection processes when the purchase qualifies as a sole source procurement as a result of the following circumstances:

(1) One vendor is the only one qualified or eligible or is quite obviously the most qualified or eligible to provide the good or service; or

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

(2) The procurement is of such a specialized nature or related to a specific geographic location that only a single source, by virtue of experience, expertise, proximity, or ownership of intellectual property rights, could most satisfactorily provide the good or service; or

(3) Applicable law requires, provides for, or permits use of a sole source procurement; or

(4) The federal government or other provider of funds for the goods and services being purchased (other than the state of Iowa) has imposed clear and specific restrictions on the use of the funds in a way that restricts the procurement to only one vendor; or

(5) Other circumstances for services exist as outlined in rule 11—106.7(80GA,HF534).

b. Special procedures required for sole source procurement. For exemption from competitive processes, the requesting agency shall submit to the director justification that the procurement meets the definition of sole source procurement. The agency initiating the procurement shall maintain in a file attached to the order the justification and response from the director. The justification, response, and order shall be available for public inspection.

11—105.5(80GA,HF534) Preferred products and vendors.

105.5(1) Preference to Iowa products. The department and state agencies shall make every effort to support Iowa products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa products. Tied bids between Iowa products shall be decided in accordance with 105.12(4).

105.5(2) Preference to Iowa-based businesses. The department and state agencies shall make every effort to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with 105.12(4).

105.5(3) American-made products. The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with 105.12(4).

105.5(4) American-based businesses. The department and agencies shall make every effort to support American businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American businesses shall be decided in accordance with 105.12(4).

105.5(5) Recycled product and content. The department and agencies shall make every effort to protect Iowa's environment in the procurement of goods. Recycled goods and goods that include recycled content shall be acquired when those goods are available and comparable in quality, performance, and price and there are not other mitigating factors. As required by Executive Order Number 56, the department and agencies shall whenever possible procure durable items that are readily recyclable when discarded, have minimal packaging, and are less toxic.

105.5(6) Products made by persons with disabilities. The department and agencies shall make every effort to procure those products for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental re-

tardation, other developmental disabilities, or mental illness if the products meet the required specifications.

105.5(7) Targeted small businesses. The department and agencies may buy from a targeted small business if a targeted small business is able to provide the good or service, pursuant to Iowa Code section 73.20. When enterprise master agreements with targeted small businesses are available, purchases shall be made through these master agreements.

11—105.6(80GA,HF534) Centralized procurement authority and responsibilities.

105.6(1) Centralized procurement of goods and services of general use. The department shall procure goods and services of general use for all state agencies with the exceptions of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law.

105.6(2) Delegation of procurement authority. The department shall establish guidelines for implementation of procurement authority delegated to agencies. The department shall assist agencies in developing purchasing procedures consistent with central purchasing policy and procedures and recommended governmental procurement standards.

105.6(3) Planning, research, and development. The director may establish advisory groups and customer councils of agency representatives appointed by the respective agency directors to assist the department in procurement planning and research and to advise on policies, procedures, and financing. This advice includes, but need not be limited to, market research, product specifications, terms and conditions; purchasing rules and guidelines; purchasing system development; and equitable financing of the enterprise purchasing system. The department will provide staff support for any advisory groups and councils that are created.

The department may periodically require forecasts from state agencies and institutions regarding future procurements. When requesting forecasts, the department shall assist agencies in securing and analyzing historical information related to previous purchasing activity.

11—105.7(80GA,HF534) Notice of solicitations.

105.7(1) General notification. The department shall provide notice of solicitations. Such notice may be provided electronically, including on the state's Web site in accordance with 2002 Iowa Acts, chapter 1072, by telephone or fax, in print, or by other means that give reasonable notice to vendors.

105.7(2) Targeted small business notification. Targeted small businesses shall be notified of all solicitations at least 48 hours prior to the general release of the notice of solicitation. The notice shall be distributed to the state of Iowa's 48-hour procurement notice Web site for posting.

105.7(3) Direct vendor notification. All procurement opportunities over \$2,500 shall be directly communicated to vendors registered through the vendor on-line system that have indicated an interest in the type of good or service that is the subject of the solicitation. The notice shall be sent to the E-mail or fax or other address entered by the vendor on the vendor on-line system.

105.7(4) Construction procurement exceeding \$25,000. Construction solicitations shall be advertised twice in a newspaper of general circulation published in the county within which the work is to be done. Additional means of advertisement used shall be consistent with practices in the construction industry. The department may publish an ad-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

vertisement in an electronic format as an additional method of soliciting bids.

11—105.8(80GA,HF534) Types of solicitations. The department may use the following solicitation methods when procuring goods and services of general use for the enterprise.

105.8(1) Informal competition.

a. Description of solicitation. The informal request for bids or proposals may be completed electronically, by telephone or fax, or by other means determined by the department.

b. Response and evaluation. Informal bids shall be tabulated, evaluated, documented and attached to the purchase order.

105.8(2) Formal competition.

a. Description of solicitation. A formal request for bids or proposals shall include:

- (1) Bid due date.
- (2) Time of public bid opening.
- (3) Complete description of commodity needed.
- (4) Buyer's name or code.

b. Response and evaluation. Bids submitted shall be sealed until the date and time of opening. All bids received prior to the date and time set forth on the solicitation will be publicly opened and announced at the designated time and place. All responses shall be documented, evaluated, tabulated and available for public inspection.

105.8(3) Request for bids. A request for bids shall be used to select the lowest responsible bidder from which to purchase goods and services of general use on the basis of price. Vendors may offer goods and services that equal or exceed the state's specifications. Bids that do not meet specifications shall be rejected. The state will not give weight to goods and services offered which exceed specifications. When it is feasible to do so and objective data exists to support the state's decision, the award may be made on a life cycle cost basis.

105.8(4) Requests for proposals.

a. Description of solicitation. The department shall issue a request for proposals whenever a requirement exists for a procurement and cost is not the sole evaluation criterion for selection. The request for proposals shall provide information about a requirement for technical equipment or professional services that is sufficient for the vendor to propose a solution to the requirement. Elements of a request for proposals shall include, but need not be limited to:

- (1) Purpose, intent and background of the requirement.
- (2) Key dates in the solicitation process.
- (3) Administrative requirements for submitting a proposal and format for the proposal.
- (4) Scope of work and performance requirements.
- (5) Evaluation criteria and method of proposal evaluation.
- (6) Contractual terms and conditions.
- (7) Need for a proposal conference.

b. Response and evaluation. Proposals submitted shall be sealed until the date and time of opening. All proposals received prior to the date and time of opening will be opened, and the name of the submitting vendor will be announced. The issuing purchasing officer will review proposals for compliance with requirements before the proposals are submitted for evaluation. A request for proposals shall be evaluated according to criteria that are developed prior to the issuance of the request for proposal document and that consist of factors relating to technical capability and the approach for meeting performance requirements; competitiveness and

reasonableness of price or cost; and managerial, financial and staffing capability.

105.8(5) Best and final offer option.

a. Description of solicitation. The department reserves the right at its sole discretion to conduct a best and final offer process prior to making an award. The best and final offer process shall be conducted after the receipt of responses to a solicitation and prior to publicly releasing the responses. Any best and final offer process shall not allow material modification of the original solicitation requirements or of the evaluation criteria.

The department shall provide to affected vendors instructions that describe in specific terms how the department intends to arrive at the final order or master agreement. The instructions may include modifying the initial offer, updating pricing based on any changes the agency has made, and any added inducements that will improve the overall score in accordance with the evaluation. Other types of solicitations described in this rule may be modified to allow for a best and final offer process.

The department may enter into negotiations with the highest ranked vendor or conduct simultaneous negotiations with a number of the most highly ranked vendors whose total scores are relatively close.

b. Response and evaluation. A best and final offer shall arrive by the due date and time determined by the department and shall be sealed. Evaluation of best and final offers shall be conducted in the same manner as original cost proposals. Scores on the best and final offer shall replace the score achieved on the original cost proposal.

When negotiating with the highest ranked vendor, the department may accept the vendor's best and final offer or reject the offer and open negotiations with the next highest ranked vendor. The department shall proceed in the same manner in rank order. If the state is unable to negotiate an agreement with the highest ranked vendor, the state may negotiate a best and final offer agreement with another vendor. A best and final offer agreement accepted from a subsequent vendor must be more favorable to the state than the rejected offer or offers.

When negotiating with the highest ranked group of vendors, the department shall request the best and final offer from each. The department shall issue a notice of intent to award that is in the best interest of the enterprise.

105.8(6) Reverse auction.

a. Description of solicitation. The department may purchase goods and services through a reverse auction, a repetitive competitive bidding process that allows vendors to submit one or more bids, with each bid having a lower cost than the previous bid. Notice to vendors shall be given as described in this chapter. The notice shall include the start and ending time for the reverse auction and the method in which it will be conducted.

b. Response and evaluation. Vendors intending to participate shall provide to the department a notice of their intent to participate and of their agreement to provide goods or services equal to or exceeding specifications. The department may require vendors to prequalify to participate in a reverse auction. Prequalification may include a requirement to commit to a baseline price.

105.8(7) Invitation to qualify (ITQ).

a. Description of solicitation. The department may prequalify vendors for certain classes of solicitations, including but not limited to:

- (1) Information technology consulting,
- (2) Architectural services, and

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

(3) Engineering services.

b. Notification of ITQ solicitation. Following institution of a prequalification process, the department may select, in a competitive manner, a prequalified vendor without public notice and without further negotiation of general terms and conditions. A solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by 105.7(2).

c. Not an award. Vendor prequalification is not an award and does not create an obligation on the part of the department.

d. Purpose. The department shall use an invitation to qualify process for the purpose of facilitating a subsequent solicitation that uses one of the other methods described in these rules. The purposes of using an invitation to qualify process include but are not limited to the following:

(1) Standardize state terms and conditions relating to the type of procurement, thereby avoiding repetition and duplication.

(2) Ensure that prequalified vendors are capable of performing work in a manner consistent with operational standards developed and adopted by the department.

(3) Implement a pay-for-performance model directly linking vendor payments to defined results as required by Iowa Code section 8.47.

(4) Consolidate records of vendor qualifications and performance in one location for reference and review.

(5) Reduce time required for solicitation of proposals from vendors for individual procurements.

e. Evaluation criteria. The department shall develop criteria for vendor qualification based upon its own expertise, the recommendations of its advisors, information and research, and the needs of agencies. The department shall develop and specify evaluation criteria for each invitation to qualify. Examples of evaluation criteria may include, but are not limited to the following:

(1) Affirmative responses to a mandatory agreement questionnaire.

(2) Ratings of at least average on a professional/technical personnel questionnaire.

(3) Scores in a specified range for each client reference survey.

(4) Competitive cost data by type of service.

(5) Acceptable vendor financial information.

f. Issuance of open invitation.

(1) The department shall issue invitations to qualify on an as-needed basis.

(2) The department shall specify the period of time that the invitation to qualify will remain open and the time period for applicability.

(3) Vendors may apply for eligibility on a continuous basis during the time period that the invitation to qualify remains open.

g. Response and evaluation.

(1) Vendors seeking to qualify shall be required to meet all the criteria established by the department for a particular category or type of solicitation.

(2) The department shall continuously evaluate vendor applications for placement on a prequalified-vendor list during the period that the invitation to qualify remains open.

h. Acceptable performance levels.

(1) The department shall establish and notify prequalified vendors of minimum acceptable performance levels and institute a performance tracking mechanism on each prequalified vendor.

(2) An approved vendor remains qualified for the period specified by the department unless the vendor does not meet minimum acceptable performance levels.

(3) If a vendor's performance falls below the minimum acceptable level, the vendor shall be removed from the prequalified list.

(4) A vendor that does not prequalify or that is removed from the prequalified list due to the vendor's performance has the right to appeal in accordance with 11—105.20(80GA,HF534).

105.8(8) Other types of solicitations. The department may use other types of competitive solicitations not outlined in these rules if the following conditions are met:

a. The solicitation method has been clearly described in public notice.

b. The solicitation method includes fair and objective criteria for determining the award.

11—105.9(80GA,HF534) Procurement of architectural and engineering services.

105.9(1) Qualifications. As part of the competitive selection process, the department shall determine whether an architect or engineer is competent and qualified. In making this determination, the department may consider the following factors:

1. Professional licensing or registration credentials,

2. Integrity and reliability,

3. Past performance relative to the quality and timeliness of service on similar projects,

4. Past experience with the state in relation to services provided,

5. Quality and timeliness of the services provided,

6. The proposed terms of delivery, and

7. The best interests of the state.

105.9(2) Fair and reasonable price. As part of the competitive selection process, the department may request, in addition to the architect's or engineer's qualifications, pricing information that may include a total fee for the specified services, hourly rates, or other pricing measures that will help the department establish a fair and reasonable price.

a. The department shall request a fee proposal(s) as part of the competitive selection process only when the services required are of limited scope, limited duration or otherwise clearly defined. An award shall not be made solely on the basis of the lowest price.

b. When a fee is not requested as part of the competitive selection process, other pricing factors shall be requested, and the firm deemed most qualified will be asked to negotiate a fee using the pricing factors included in the firm's proposal. If a fair and reasonable price for the work cannot be negotiated, the department shall reject the firm's proposal and begin negotiations for a fair and reasonable price with the next most qualified firm.

Examples of fair and reasonable pricing factors include:

(1) Hourly rates and anticipated hours,

(2) A lump sum fee,

(3) Any other costs the department determines to be fair and reasonable.

c. If reimbursable expenses are included in the price proposal, rates shall not exceed those in procedure 210.245, "Travel-in-state—board, commission, advisory council, and task force member expenses," of the department of administrative services state accounting enterprise's Accounting Policy and Procedures Manual.

d. The fee proposal or other pricing information shall serve as a basis for contract negotiations.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

11—105.10 Reserved.

11—105.11(80GA,HF534) Specifications in solicitations. All specifications used in solicitations shall be written in a manner that encourages competition.

105.11(1) Limitations on brands and models. Specifications shall be written in general terms without reference to a particular brand or model unless the reference is clearly identified as intending to illustrate the general characteristics of the item and not to limit competition. A specific brand or model may be procured only when necessary to maintain a standard required or authorized by law or rule or for connectivity or compatibility with existing commodities or equipment.

105.11(2) Recycled content and products. When appropriate, specifications shall include requirements for the use of recovered materials and products. The specifications shall require, at a minimum, that all responses to a solicitation include a product content statement that describes the percentage of the content of the item that is reclaimed material.

The department shall revise specifications developed by agencies if the specifications restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will impede the intended use of the product.

Specifications shall support the following procurements:

a. Products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires.

b. Bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with 2003 Iowa Acts, House File 534, section 35.

105.11(3) Life cycle cost and energy efficiency. The department and agencies shall utilize life cycle cost and energy efficiency criteria in developing standards and specifications for procuring energy-consuming products.

105.11(4) All or none solicitations. A solicitation may specify whether or not responses will be accepted on an all or none basis. Only when this statement appears on the solicitation may it be included in the response. The department may award either by item or by lot, whichever is to the advantage of the enterprise.

105.11(5) Financial security. The department may require bid, litigation, fidelity, and performance security as designated in the solicitation documents. When required, a security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the department.

When required, a security shall not be waived. The security provided by vendors shall be retained until all provisions of the solicitation have been met. The security will then be returned to the vendor.

11—105.12(80GA,HF534) Awards.

105.12(1) Intent to award. After evaluating responses to a solicitation using formal competition, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). Documentation of awards for solicitations using informal competition will be made available to interested parties upon request. This notice of intent to award does not constitute the formation of a contract(s) between the state and successful vendor(s). If a vendor is not registered on the vendor on-line system and

does not provide an E-mail address or fax number, the notice will be mailed.

105.12(2) Rejection of bids. The department reserves the right to reject any or all responses to solicitations at any time for any reason. New bids may be requested at a time deemed convenient to the department and agency involved.

105.12(3) Minor deficiencies and informalities. The department reserves the right to waive minor deficiencies and informalities if, in the judgment of the department, the best interest of the state of Iowa will be served.

105.12(4) Tied bids. An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.

Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa produced or Iowa manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product.

105.12(5) Consideration of life cycle costs. When appropriate to the procurement, life cycle costs shall be considered during the award process.

11—105.13(80GA,HF534) Master agreements available to governmental subdivisions. The department shall provide a list of current master agreements to a governmental subdivision upon request. The list may be provided in an electronic format. A governmental subdivision may request a copy of a specific master agreement. The department may provide the master agreement in an electronic format and assess a copying charge when a printed copy is requested.

11—105.14(80GA,HF534) Agency purchasing authority and responsibilities.

105.14(1) Purchase of goods. An agency may acquire goods not otherwise available from a master agreement and in accordance with the procurement threshold guidelines in 11—105.15(80GA,HF534).

105.14(2) Purchase of services. An agency may procure services unique to the agency's program or used primarily by that agency and not by other agencies. The department will assist agencies with these procurements upon request. Procurement of services by agency shall comply with the provisions of 11—Chapters 106 and 107.

105.14(3) Procurements requiring additional authorization. Except where exempted by statute, the following purchases require additional approval.

a. Information technology devices, software and services, as required in 2003 Iowa Acts, House File 534, sections 18 and 22, and 471—Chapter 13.

b. Vehicles, as prescribed in 2003 Iowa Acts, House File 534, section 51.

c. Printing and printing equipment, as prescribed in 2003 Iowa Acts, House File 534, section 45, and related rules.

d. Architectural and engineering services, except for agencies with independent authority, as prescribed in 2003 Iowa Acts, House File 534, sections 29, 30, 36, 211, and 282.

e. Legal counsel, as prescribed in Iowa Code section 13.7.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

f. Telecommunications equipment and services, as required by Iowa Code chapter 8D and the rules of the telecommunications and technology commission.

105.14(4) Establishment of agency internal procedures and controls. Agencies shall establish internal controls and procedures to initiate purchases, complete solicitations, make awards, approve purchases, and receive goods. The procedures shall address adequate public recordings of the purchases under the agency's authority consistent with law and rule. Internal controls and security procedures that are consistent with the requirements of the department and state auditor, including staff authority to initiate, execute, approve, and receive purchases, shall be in place for all phases of the procurement.

105.14(5) Agency receipt of goods. Agencies receiving goods shall:

- a. Inspect or otherwise determine that the goods received meet the specifications, terms and conditions within the order or master agreement,
- b. Initiate timely payment for goods meeting specifications, and
- c. Document the receipt of goods electronically in a manner prescribed by the department.

105.14(6) Partial orders. Agencies may accept partial orders and await additional final receipt or may accept a partial order as a final order. The agency shall notify the vendor of its decision. An agency may pay a vendor a prorated amount for the partial order.

105.14(7) Items not meeting specifications. An agency shall not approve final receipt when goods appear not to meet specifications. An agency shall approve final receipt only when satisfied that the goods meet or exceed the specifications, terms and conditions of the order or master agreement. When an agency and vendor are unable to agree as to whether the specifications, terms and conditions are met, the department shall make the decision.

Agencies shall notify the department and the vendor when apparent defects are first noticed. The department will assist the agency with negotiating a satisfactory settlement with the vendor.

All provisions of 11—105.19(80GA,HF534) shall apply to agency receipt of goods.

105.14(8) Payment to vendors following final receipt. An agency shall not unreasonably delay payment on orders for which final receipt is accepted. Except in the case of latent defects in goods, payment to the vendor by the agency signifies agreement by the agency that the goods received are satisfactory. Payment to vendors may be made by any commercially acceptable method, including a state procurement card, in accordance with state financial requirements.

11—105.15(80GA,HF534) Thresholds for delegating procurement authority.

105.15(1) Agency direct purchasing. An agency may procure non-master agreement goods up to \$2,500 per transaction in a competitive manner. Commencing July 1, 2004, that amount shall increase to \$5,000. Three or more informal quotes shall be obtained, unless quotes are not reasonably available or unless the item is purchased from a targeted small business. The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format. However, agencies may purchase directly from a targeted small business without competition.

105.15(2) Targeted small business—procurement up to \$5,000. Agencies may purchase directly from a vendor if the

vendor is a certified targeted small business and the purchase does not exceed \$5,000.

105.15(3) Preference to targeted small businesses. Agencies shall search the TSB directory on the Web and purchase directly from the TSB source if it is reasonable and cost-effective to do so. Agencies shall comply with the TSB notification requirements in subrule 105.7(2).

105.15(4) Alternative to master agreement. An agency may purchase a comparable good or service of general use available on a master agreement from a different vendor if the quantity required or an emergency or immediate need makes it cost-effective to purchase from a non-master agreement vendor. In instances where an agency or agencies routinely or on a recurring basis purchase a specific good or service not on contract, the department shall establish a master agreement for that good or service in cooperation with the affected agencies.

105.15(5) Misuse of agency authority.

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. If it is cost-effective to purchase a comparable good or service of general use from a master agreement, the agency shall do so. The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in subrules 105.15(1) and 105.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement. The department may rescind delegated authority of an agency that habitually misuses its authority.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule 105.15(4).

11—105.16 Reserved.

11—105.17(80GA,HF534) Vendor registration and approval. Every vendor wishing to do business with the state shall register as a vendor. Every vendor shall register prior to submitting a response to a solicitation except in the case of an emergency procurement when the vendor shall register prior to filling an order or as soon as practicable. Only properly registered vendors are entitled to payment.

105.17(1) Vendor on-line registration. Vendors are encouraged to register electronically using the vendor on-line system when it becomes available. Vendors that are registered on the vendor on-line system are eligible for all services at the site, including receiving electronic notices of solicitations and submitting an electronic response to a solicitation.

Information from vendors completing registration through the vendor on-line system shall be protected through the use of uniquely identifying information known only to the department and the vendor to confirm the identity of the vendor for all subsequent actions, including responses to solicitations.

The department may take action to restrict or deny use of the vendor on-line system in response to inappropriate use of the site. The department may edit or delete a vendor's posting on the vendor bulletin board if the posting is not appropriate to the business of state purchasing.

105.17(2) Alternate vendor registration. A vendor may register by directly contacting the department or an agency initiating a procurement.

105.17(3) Vendor registration information maintenance. Vendors are responsible for maintaining current and accurate registration information. If registered on the vendor on-line system, the vendor shall update the vendor's account whenever information changes. If registered in an alternate man-

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ner, the vendor is responsible for notifying the department or agency of any change in information. This information includes, but is not limited to, company name or type, payment address, procurement address and other contact information.

11—105.18(80GA,HF534) Vendor performance.

105.18(1) Review of vendor performance. The department, in cooperation with agencies, shall periodically, but at least directly prior to renewal of a master agreement, review the performance of vendors. Agencies are encouraged to document vendor performance throughout the duration of the contract and report any problems to the department as they are identified. Performance reviews shall be based on the specifications of the master agreement or order, and shall include, but need not be limited to:

1. Compliance with the specifications,
2. On-time delivery, and
3. Accuracy of billing.

This review will help determine whether the vendor is a responsible bidder for future projects.

105.18(2) Vendor suspension or debarment. Prior performance on a state contract may cause a vendor to be disqualified or prevent the vendor from being considered a qualified bidder. In addition, a vendor may be suspended or debarred for any of the following reasons:

- a. Failure to deliver within specified delivery dates without agreement of the department or the agency.
- b. Failure to deliver in accordance with specifications.
- c. Attempts to influence the decision of any state employee involved in the procurement process.
- d. Evidence of agreements by vendors to restrain trade or impede competitive bidding. Such activities shall in addition be reported to the attorney general for appropriate action.
- e. Determination by the civil rights commission that a vendor conducts discriminatory employment practices in violation of civil rights legislation and executive order.
- f. Evidence that a vendor has willfully filed a false certificate with the department.
- g. Debarment by the federal government.

105.18(3) Correcting performance. The department shall notify in writing any vendor considered for suspension or debarment and provide the vendor an opportunity to cure the alleged situation. If the vendor fails to remedy the situation after proper notice, the department director may suspend the vendor from eligibility for up to one year or debar the vendor from future business depending on the severity of the violation. The appeal provisions of this chapter shall apply to the decision of the director.

105.18(4) Remedies for failure to deliver or for delivery of nonconforming goods or services. If a vendor fails to remedy the situation after the opportunity to cure is provided, the department or agency may procure substitute goods or services from another source and charge the difference between the contracted price and the market price to the defaulting vendor. The attorney general shall be requested to make collection from the defaulting vendor.

11—105.19(80GA,HF534) General instructions, terms and conditions for vendors. The following instructions, terms and conditions shall apply to all solicitations unless otherwise stated in the solicitation.

105.19(1) Instructions for vendors. The vendor must follow all instructions in the manner prescribed and furnish all information and samples as stated in the solicitation. Minor deficiencies and informalities may be waived if, in the judgment of the department, the best interests of the state will be served.

105.19(2) Deadline for submission of bid or proposal. It is the responsibility of the vendor to submit a response to a solicitation according to time, date, and place stated in the solicitation documents. Late responses will be rejected. Unfamiliarity with a geographical location, weather events, labor stoppages, failure of a carrier to meet promised delivery schedules, mechanical failures, and similar reasons are not sufficient justifications for the department to accept a late bid or proposal. At its sole discretion, the department may accept a late response if the delay is due to a catastrophic event and acceptance by the department does not result in an advantage to a competitor.

105.19(3) Confidential information in a solicitation response. Unless material submitted in response to a solicitation is identified as proprietary or confidential by the vendor in accordance with Iowa Code section 22.7, all submissions by a vendor are public information. To facilitate a fair and objective evaluation of proposals, submissions by vendors will not be released to competitors or the public prior to issuance of the notice of intent to award. If a vendor's claim of confidentiality is challenged by a competitor or through a request by a citizen to view the proposal, it is the sole responsibility of the vendor to defend the claim of confidentiality in an appropriate venue. The department will not release the subject material while the matter is being adjudicated.

105.19(4) Recycled products. A vendor shall be required to include for all applicable procurements a product content statement providing the percentage of the content of the item that is reclaimed material.

105.19(5) Modifications or withdrawal of a solicitation response. A solicitation response may be withdrawn prior to the time and date set for opening. Withdrawal requests shall be in writing. With the approval of the director or designee, a bid or proposal may be withdrawn after opening only if the vendor provides prompt notification and adequately documents the commission of an honest error that might cause undue financial loss.

105.19(6) Security. The department may require bid or proposal security in accordance with subrule 105.11(5). When required, security shall not be waived.

105.19(7) Assignments. A vendor may not assign an order or a master agreement to another party without written permission from the department.

105.19(8) Strikes, lockouts or natural disasters. A vendor shall notify the department promptly whenever a strike, lockout or catastrophic event prevents the vendor from fulfilling the terms of an order or contract. The department and affected agency may elect to cancel an order or master agreement at their discretion.

105.19(9) Subcontractors or secondary suppliers. Vendors shall be responsible for the actions of and performance of their subcontractors or secondary suppliers. Vendors shall be responsible for payment to all subcontractors or secondary suppliers. Vendors awarded a state construction contract shall disclose the names of all subcontractors within 48 hours after the award of the contract and advise the department of changes in the names of subcontractors throughout the duration of the project.

105.19(10) Material and nonmaterial compliance. At its sole discretion, the department reserves the right to waive technical noncompliance with instructions when such noncompliance, as viewed by a reasonable and prudent person, did not result in an advantage to the vendor submitting the apparent lowest bid or best proposal or would not result in a disadvantage to other vendors submitting competing bids or proposals.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

105.19(11) Item and pricing. Price information shall be submitted in response to a solicitation as stated in the instructions. In the case of an error, unit price shall prevail. Unless otherwise stated, all prices shall be submitted with free-on-board (FOB) destination including freight and handling costs.

Prices for one-time purchases must be firm, and preference will be given to firm prices in multiple award contracts. If the department believes it is in the best interest of the state, an economic price adjustment clause based on an acceptable economic indicator may be included in multiple delivery contracts.

a. Price during testing. Items may require testing either before or after the final award is made. In these cases, the vendor must guarantee the price through the completion of testing.

b. Unless otherwise contained in the specifications, all items for which a vendor submits a quotation shall be new, of the latest model, crop year or manufacture and shall be at least equal in quality to those specified.

c. Escalator clauses. Unless specifically provided for in the solicitation document, a response containing an escalator clause that provides for an increase in price will not be considered.

d. Discounts. Only cash discounts that apply to payment terms of 30 days or more will be considered in determining awards. Other payment terms will not be considered. The state will attempt to earn any discounts offered and will compute the period from the latest of the following:

- (1) From date of invoice.
- (2) From the date the complete order is received.
- (3) From the date the vendor's certified invoice is received.

When additional testing of a product is required after delivery, the discount period shall not begin until testing is completed and final approval made.

105.19(12) Notice of intent to award. After evaluating responses to a solicitation, the department shall notify each vendor submitting a response to the solicitation of its intent to award to a particular vendor or vendors subject to execution of a written contract(s). This notice does not constitute the formation of a contract(s) between the state and the vendor(s) to which the notice of intent to award has been issued.

If a vendor is not registered on the vendor on-line system and does not provide an E-mail address or fax number, the notice will be sent by ordinary mail.

105.19(13) Time of acceptance of award. If a time is not stated in the competitive selection document, the vendor may state the length of time that the state has to accept the vendor's offer. This period shall not be less than 10 days for informal quotations or less than 30 days for formal bids. If the vendor states no minimum time period, the offer shall be irrevocable for 90 days. The department may require a longer evaluation period for technical equipment.

105.19(14) Delivery.

a. Delivery date. A vendor shall show in a response to a solicitation the earliest date on which delivery can be made. The department may include in a solicitation the acceptable delivery date for a commodity. The department may consider delivery dates as a factor in determining to which vendor the notice of intent to award shall be issued. Goods in transit remain the responsibility of the vendor.

b. Notice of rejection. The reason for any rejection of a shipment, based on apparent deficiencies that can be disclosed by ordinary methods of inspection, will be given by the receiving agency to the vendor and carrier within a rea-

sonable time after delivery of the item with a copy of this notice provided to the purchasing section. Notice of latent deficiencies that would make items unsatisfactory for the intended purpose may be given at any time after acceptance.

c. Disposition of rejected item. The vendor must remove at the vendor's expense any rejected item. If the vendor fails to remove the rejected item within 30 days of notification, the department or an agency may dispose of the item by offering it for sale, deduct any accrued expense and remit the balance to the vendor.

d. Testing after delivery. Laboratory analysis of an item or other means of testing may be required after delivery. In such cases, vendors will be notified in writing that a special test will be made and that payment will be withheld until completion of the testing process.

e. Risk of loss or damage. Risk of loss or damage remains with the vendor until delivery and acceptance by the agency at the destination shown on the order.

f. Vendor responsibility for removal of trade-ins. Whenever the purchase of an item of equipment has been made with the trade-in of equipment, it shall be the vendor's responsibility to remove the traded equipment within 30 days of the final acceptance of the purchased equipment by the agency, if not otherwise specified in the competitive selection document. The department or agency will not assume responsibility for equipment that is not removed within this time period and may cause the equipment to be removed by and shipped to the vendor and may bill the vendor for all packing, crating and transportation charges.

105.19(15) Master agreement and purchase order modifications. When consistent with the purpose and intent of the original master agreement or order, amendments or modifications may be issued. All modifications shall be documented and approved by the department or agency and the vendor before modifications take effect. Modifications shall not be used unreasonably to avoid further competition.

105.19(16) Federal and state taxes. The state of Iowa is exempt from the payment of Iowa sales tax, motor vehicle fuel tax and any other Iowa tax that may be applied to a specified commodity or service. A vendor shall be furnished a revenue department exemption letter upon request.

11—105.20(80GA,HF534) Vendor appeals.

105.20(1) Filing an appeal. Any vendor that filed a timely bid or proposal and that is aggrieved by an award of the department may appeal the decision by filing a written notice of appeal before the Director, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319, within five calendar days of the date of award, exclusive of Saturdays, Sundays, and legal state holidays. The department must actually receive the notice of appeal within the specified time frame for it to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the department's award.

105.20(2) Procedures for vendor appeal. The vendor appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of the department's administrative rules governing contested case proceedings, unless the provisions of this rule provide otherwise.

a. Notice of hearing. Upon receipt of a notice of vendor appeal, the department shall contact the department of inspections and appeals to arrange for a hearing. The department of inspections and appeals shall send a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

The presiding officer shall hold a hearing on the vendor appeal within 60 days of the date the notice of appeal was received by the department.

b. Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

c. Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

d. Amendments to notice of appeal. The aggrieved vendor may amend the grounds upon which the vendor challenges the department's award no later than 15 days prior to the date set for the hearing.

e. If the hearing is conducted by telephone or on the Iowa communications network, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted.

f. The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to all parties by first-class mail.

g. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

(1) Method of recording. Oral proceedings in connection with a vendor appeal shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that certified shorthand reporters record the hearing shall bear the costs.

(2) Transcription. A party may request that oral proceedings in connection with a hearing in a case or any portion of the oral proceedings be transcribed. A party requesting transcription shall bear the expense of the transcription.

(3) Tapes. Parties may obtain copies of tapes of oral proceedings from the presiding officer at the requester's expense.

(4) Retention time. The department shall file and retain the recording or stenographic notes of oral proceedings or the transcription for at least five years from the date of the decision.

105.20(3) Stay of agency action for vendor appeal.

a. When available.

(1) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

(2) Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order, and shall state the reasons justifying a stay.

b. When granted. In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5)"c."

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

105.20(4) Review of proposed decision.

a. The proposed decision shall become the final decision of the department 15 days after mailing the proposed decision, unless prior to that time a party submits an appeal of the

proposed decision in accordance with the provisions of this subrule.

b. A party appealing the proposed decision shall mail or deliver the notices of appeal to the Director, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319. Failure to request review will preclude judicial review unless the department reviews the proposed decision on its own motion. If the department reviews the proposed decision on its own motion, it will send notice of the review to all parties participating in the appeal.

c. A party appealing the proposed decision shall mail a copy of the notice of appeal to all other parties. Any party may submit to the department exceptions to and a brief in support of or in opposition to the proposed decision within 15 days after the mailing of a notice of appeal or of a request for review. The submitting party shall mail copies of any exceptions or brief it files to all other parties to the proceeding. The director shall notify the parties if the department deems oral arguments by the parties to be appropriate. The director will issue a final decision not less than 30 days after the notice of appeal is filed.

d. The department shall review the proposed decision based on the record and issues raised in the hearing. The department shall not take any further evidence and shall not consider issues that were not raised at the hearing. The issues for review shall be specified in the party's notice of appeal. The party appealing the proposed decision shall be responsible for transcribing any tape of the proceeding before the presiding officer and filing the transcript as part of the record for review. The party appealing the proposed decision shall bear the cost of the transcription regardless of the method used to transcribe the tape.

e. Each party shall have the opportunity to file exceptions to the proposed decision and present briefs in support of or in opposition to the proposed decision. The department may set a deadline for submission of briefs. When the department consents, oral arguments may be presented. A party wishing to make an oral argument shall specifically request it. The department in its sole discretion may schedule oral arguments regarding the appeal. The department shall notify all parties in advance of the scheduled time and place for oral arguments.

f. The director shall issue a final decision by the department. The decision shall be in writing and shall conform to the requirements of Iowa Code chapter 17A.

These rules are intended to implement 2003 Iowa Acts, House File 534, sections 28, 29 and 30.

[Filed 10/7/03, effective 12/3/03]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2887B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code section 159.5(11) and section 190C.3 as amended by 2003 Iowa Acts, House File 600, the Department of Agriculture and Land Steward-

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ship hereby amends Chapter 47, "Iowa Organic Program," Iowa Administrative Code.

The purpose of these amendments is to remove rules which no longer have a statutory basis due to the amending of Iowa Code chapter 190C by 2003 Iowa Acts, House File 600, and to comply with federal requirements regulating production, handling and labeling of organic agricultural products pursuant to 7 CFR Part 205, "National Organic Program."

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2709B**. There were no changes from the Notice of Intended Action.

No waiver provision is included in these amendments because 21—Chapter 8 allows for waivers in appropriate cases and applies to these amendments.

Pursuant to 2003 Iowa Acts, House File 636, the Department finds that the fiscal impact of these amendments does not meet the threshold requirements.

These amendments are intended to implement Iowa Code chapter 190C as amended by 2003 Iowa Acts, House File 600.

These amendments will become effective December 3, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 21—47.2(190C) as follows:

21—47.2(190C) Exempt operations. Production or handling operations exempt from organic certification according to 7 CFR Section 205.101 shall:

1. Submit to the department a signed Exempt Party Declaration form, as provided by the department, attesting to knowledge of and compliance with Iowa Code chapter 190C and this chapter; *and*
2. Submit a processing fee *as published by the department*; *and*
3. ~~Maintain records to verify compliance and trace an organic product from production site to sale for consumption. Records shall be kept for five years.~~

ITEM 2. Amend subrule **47.3(2)**, paragraph "**a**," as follows:

a. Requirements.

~~(1) A minimum of 30 feet shall be maintained as a buffer zone between certified organic crops and areas treated with prohibited substances. A vegetative solid stand windbreak a minimum of 15 feet tall may be substituted for a 30-foot buffer zone.~~

~~(2) (1) If crops are grown in this a buffer zone, such crops shall not be labeled, sold or in any way represented as organic.~~

~~(3) (2) Crops harvested from buffer zones shall be kept separate from organic crops, and appropriately designated storage areas shall be clearly identified and records maintained to sufficiently identify the disposition of nonorganic product.~~

ITEM 3. Amend subrule **47.3(2)**, paragraph "**b**," as follows:

b. Recommendations.

~~(1) A minimum of 25 feet is recommended as a buffer zone between certified organic crops and areas treated with prohibited substances.~~

~~(4) (2) Planting windbreaks and hedgerows is encouraged to help reduce spray drift from neighboring farms and wind damage to crops.~~

~~(2) (3) It is recommended that the producer notify neighbors, county roadside management officials, railroads, utility companies and other potential sources of contaminants. It is~~

recommended that the producer provide such individuals with maps of organic production areas, request individuals not to spray adjacent areas, and request to be informed if prohibited materials are applied to land adjacent to organic production areas.

~~(3) (4) Place "no-spray" or "organic farm" signs where appropriate, e.g., roadways and access areas.~~

ITEM 4. Amend subrule **47.3(5)** by rescinding paragraph "**a**" and adopting in lieu thereof the following **new** paragraph "**a**":

a. Annual agronomic crops (row crops and small grain crops).

(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.

(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:

1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;
2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or
3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.

ITEM 5. Amend subrule **47.3(5)** by rescinding paragraph "**b**" and adopting in lieu thereof the following **new** paragraph "**b**":

b. Annual horticultural crops (fruit, vegetable, and herb crops).

(1) Crops of the same species or family shall not be grown repeatedly without interruption on the same field or plot.

(2) Soil-building period. It is recommended that each field or plot be planted in and achieve a viable stand of a solid-seeded (non-row), soil-building legume crop or crop mixture that includes at least one legume species and that the field or plot be maintained a minimum of one year out of a five-year period. During this soil-building period, the producer may maintain the soil-building crop through the crop's growing period to maturity or until the crop achieves its optimal soil-building characteristics. Soil-building crops may be used as winter cover or plow-down in fall. Some examples of soil-building practices include the following:

1. Plant and harvest a small grain crop with the solid-seeded crop mixture identified above; e.g., plant oats and alfalfa in the spring and harvest oats in the summer;
2. Maintain the solid-seeded crop mixture identified above for more than one season; e.g., alfalfa established in one season may be maintained and harvested for successive years if desired; or
3. Harvest the solid-seeded crop mixture identified above prior to its incorporation into the soil; e.g., harvest oats and alfalfa mixture in the summer prior to incorporation into the soil at a later time.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

(3) It is recommended that the producer make an effort to establish a rotation sequence where crops of the same species or family, e.g., Solanaceae family: tomatoes, peppers, potatoes, and eggplant, are not planted in the same field or plot in consecutive years.

ITEM 6. Rescind subrule **47.3(5)**, paragraph “c,” subparagraph (3).

ITEM 7. Rescind subrule **47.3(5)**, paragraph “d.”

ITEM 8. Rescind subrule **47.4(2)**, paragraph “c,” and re-letter paragraph “d” as “c.”

ITEM 9. Amend rule 21—47.6(190C), introductory paragraph, as follows:

21—47.6(190C) General requirements. In order to receive and maintain organic certification from the department, producers, processors and handlers of organic agricultural products shall apply for organic certification with the department and submit all required materials; comply with Iowa Code chapter 190C and this chapter; permit the department to access the operation and all applicable records as deemed necessary; comply with all local, state and federal regulations applicable to the conduct of such business; and submit all applicable fees to the department pursuant to Iowa Code section 190C.5(1) *as amended by 2003 Iowa Acts, House File 600*, and this chapter; and receive approval for certification by the organic standards board.

ITEM 10. Rescind and reserve rule **21—47.7(190C)**.

ITEM 11. Amend subrule 47.8(1) as follows:

47.8(1) The department shall serve as certification agent on behalf of and as authorized by the secretary of agriculture pursuant to Iowa Code section 190C.4(2) *190C.3 as amended by 2003 Iowa Acts, House File 600*.

ITEM 12. Amend rule 21—47.9(190C), introductory paragraph, as follows:

21—47.9(190C) Fees. Fees are established for application, inspection, and certification to support costs associated with activities necessary to administer this program pursuant to Iowa Code sections 190C.5(1) to 190C.5(3) *as amended by 2003 Iowa Acts, House File 600*. The applicant shall submit all fees to the department for the specific amount and at the appropriate time as specified in this rule. A schedule of application, inspection and certification fees shall be published by the department and disseminated with the application packet.

ITEM 13. Rescind subrule 47.9(3) and insert in lieu thereof the following new subrule:

47.9(3) Certification fees. Certification fees may be adjusted annually pursuant to Iowa Code section 190C.5(2) as amended by 2003 Iowa Acts, House File 600. The certification fee is assessed annually.

ITEM 14. Amend rule 21—47.10(190C) as follows:

21—47.10(190C) Compliance.

47.10(1) Enforcement and investigations. The department and the attorney general shall enforce Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.21 *as amended by 2003 Iowa Acts, House File 600*.

47.10(2) Complaints. Any person may submit a written complaint to the department regarding a suspected violation of Iowa Code chapter 190C and this chapter pursuant to Iowa Code section 190C.22(2) *as amended by 2003 Iowa Acts, House File 600*. Such signed complaints shall be submitted

on the required form provided by the department upon request.

47.10(3) Inspection and testing, reporting and exclusion from sale—unscheduled inspection. All parties making an organic claim may be subject to an unscheduled on-site inspection, review of records and sampling if deemed necessary by the department pursuant to Iowa Code sections 190C.4(2), 190C.22(2) and 190C.22(3), 190C.22(4), and 190C.24(1) *as amended by 2003 Iowa Acts, House File 600*, to verify compliance.

47.10(4) Adverse action appeal process.

a. Appeals. Appeal procedures are established pursuant to Iowa Code section 190C.3(6) under 21—Chapter 2. ~~The organic standards board shall have final agency action, subject to the parameters of Iowa Code chapter 17A. The appeals committee shall be comprised of board members who did not serve on the certification review committee for the particular case in question and who have no conflict of interest in the matter. The department may receive and process appeals regarding organic certification to the extent authorized by the national organic program.~~ Procedures and restrictions concerning the hearing of appeals shall apply.

b. Written appeal. Except as specifically provided in the Iowa Code or elsewhere in the Iowa Administrative Code, a person who wishes to appeal an action or proposed action of the department which adversely affects the person shall file a written appeal with the department within 30 calendar days of the action or notice of the intended action. A written notice of appeal shall be considered filed on the date of the postmark if the notice is mailed. The failure to file timely shall be deemed a waiver of the right to appeal. ~~Appeal shall first go to the certification review committee. The certification review committee will determine if the party's claim has sufficient merit to overturn the earlier denial in a timely manner. If this is not the case, however, the appeal will be forwarded from the certification review committee to the appeals committee.~~

c. Records. Records of all appeals, complaints and disputes, and remedial actions relative to certification shall be maintained by the department for a minimum of ten years. Records shall include documentation of appropriate subsequent action taken and its effectiveness.

ITEM 15. Amend rule 21—47.11(190C), introductory paragraph, as follows:

21—47.11(190C) Regional organic associations (ROAs). ~~With approval by the board, the~~ The department may register and authorize a regional organic association to assist the ~~organic standards board~~ department by providing application assistance to its ~~the association's~~ members requesting application assistance.

ITEM 16. Amend subrule 47.11(1), introductory paragraph, as follows:

47.11(1) Registration and authorization. ~~Regional If authorized by the department, regional~~ organic associations shall be registered and authorized by the department in order to assist the ~~organic standards board pursuant to Iowa Code section 190C.6~~ department.

ITEM 17. Amend subrule **47.11(1)**, paragraph “b,” subparagraph (2), as follows:

(2) The regional association shall receive from the department a letter of authorization to provide application assistance ~~upon approval by the organic standards board.~~

ITEM 18. Rescind rule **21—47.12(190C)**.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 19. Amend **21—Chapter 47**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 190C as amended by 2003 Iowa Acts, House File 600.

[Filed 10/8/03, effective 12/3/03]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2889B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment reflects the prohibition in Federal Election Commission regulation 11 CFR 110.20 that prohibits foreign nationals from expending funds in connection with a state or local campaign or election in Iowa. The Board receives frequent questions on this issue.

The amendment does not contain a waiver provision as the prohibition is mandated by federal regulation.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2702B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted the amendment on October 8, 2003.

This amendment is intended to implement Iowa Code chapter 56.

This amendment will become effective on December 3, 2003.

The following amendment is adopted.

Adopt **new** rule 351—4.28(56) as follows:

351—4.28(56) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a contribution or expenditure of money or other thing of value, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a campaign committee organized under Iowa Code chapter 56. Foreign nationals are also prohibited from making independent expenditures in relation to any state or local campaign or election in Iowa.

4.28(1) Foreign national defined. "Foreign national" means a person who is not a citizen of the United States and who is not lawfully admitted for permanent residence. "Foreign national" also includes a "foreign principal," such as a government of a foreign country or a foreign political party, partnership, association, corporation, organization, or other combination of persons that has its primary place of business in or is organized under the laws of a foreign country. "Foreign national" shall not include any person who is a citizen of the United States or who is a national of the United States.

4.28(2) Acceptance of contributions and independent expenditures from foreign nationals. No person shall knowing-

ly accept or receive any contribution from a foreign national with regard to such person's election-related activities.

4.28(3) Participation by foreign nationals in decisions involving election-related activities. A foreign national shall not, directly or indirectly, participate in the decision-making process of any person, including a corporation, labor organization, political committee, or political organization, with regard to such person's election-related activities. Decisions including election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office or decisions involving the administration of a political committee.

This rule is intended to implement Iowa Code chapter 56.

[Filed 10/9/03, effective 12/3/03]

[Published 10/29/03]

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ARC 2888B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments permit a nonprofit advocacy corporation that meets certain criteria and receives Board certification as a political corporation to make independent expenditures expressly advocating for or against candidates. The provisions of the rule reflect federal regulation 11 CFR 114.10, a Board investigation, and the following court decisions: Federal Election Comm'n v. National Right to Work Comm., 459 U.S. 197; Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238; Iowa Right to Life Committee, Inc., et al. v. Kay Williams, et al., 187 F.3d 963; and Federal Election Comm'n v. Beaumont, (02-403).

The amendments do not contain a waiver provision as the requirements reflect federal court decisions interpreting campaign finance provisions.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2695B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted the amendments on October 8, 2003.

These amendments are intended to implement Iowa Code sections 56.13 and 56.15.

These amendments will become effective on December 3, 2003.

The following amendments are adopted.

ITEM 1. Rescind rule 351—4.50(56,68B) and adopt the following **new** rule in lieu thereof:

351—4.50(56) Political corporations. The prohibitions in Iowa Code section 56.15 on corporations that make expenditures to expressly advocate for or against a clearly identified candidate do not apply to a nonprofit advocacy corporation that has received certification as a political corporation pursuant to this rule.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

4.50(1) Applicability. A political corporation may make an independent expenditure as defined in Iowa Code section 56.13(1) to expressly advocate for or against a clearly identified candidate. However, a political corporation may not make direct contributions to a candidate's committee, state statutory political committee, county statutory political committee, or any political committee (PAC) that is established to expressly advocate for or against a clearly identified candidate.

4.50(2) Criteria. A corporate entity applying for certification as a political corporation shall meet all of the following criteria:

a. The corporation was organized solely for political purposes and engages in minor business activities that generate minimal income and that are incidental to its political purposes.

b. The corporation is not sponsored by a business corporation and has a policy of accepting only an insignificant and insubstantial amount of income from business corporations.

c. The corporation has no shareholders or others that have claims on its assets or earnings.

4.50(3) Application. A corporate entity seeking certification as a political corporation shall submit a letter affirming that the corporate entity meets all of the criteria set out in subrule 4.50(2). The application letter shall also include all other pertinent details of the corporate entity's activities and shall be signed by a corporate officer.

4.50(4) Board review. The board shall review an application letter from a corporate entity seeking status as a political corporation and shall issue a letter of approval or denial.

4.50(5) Denial or failure to seek certification. It shall be deemed a violation of Iowa Code section 56.15 for a corporate entity that is denied certification as a political corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate. It shall be deemed a violation of Iowa Code section 56.15 for a corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate without first seeking certification as a political corporation.

4.50(6) Filing. As required by Iowa Code section 56.13, a corporate entity granted political corporation status that makes an independent expenditure in excess of \$750 in the aggregate shall file an independent expenditure statement within 48 hours after the making of the expenditure.

4.50(7) Campaign committee incorporation. An Iowa committee organized under Iowa Code chapter 56 that chooses to incorporate may do so without applying for certification as a political corporation. A committee that chooses to incorporate is not a prohibited contributor under Iowa Code section 56.15.

This rule is intended to implement Iowa Code sections 56.13 and 56.15.

ITEM 2. Rescind and reserve rule **351—4.51(56,68B)**.

[Filed 10/9/03, effective 12/3/03]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2895B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6 and 2003 Iowa Acts, House File 667, section 50, the Department of Human Services amends Chapter 53, "Rent Subsidy Program," Iowa Administrative Code.

These amendments change the eligibility requirements for the rent subsidy program, which provides assistance to Medicaid home- and community-based waiver recipients who are paying more than 30 percent of their income for rent and are not eligible for other rental assistance programs.

As mandated by 2003 Iowa Acts, House File 667, section 50, under these amendments, only risk of placement in a nursing facility qualifies a needy waiver recipient for rent subsidy. These amendments rescind rules requiring that consumers be discharged from a medical institution immediately before receiving waiver services or have reached age 18 during the last year of their institutional stay as conditions of eligibility.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2654B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 2658B**. The Department received no comments on the Notice of Intended Action. These amendments incorporate the following changes to the Notice of Intended Action:

- Rescind paragraph 53.3(1)"d" and subrule 53.4(3) and remove the reference to subrule 53.4(3) in subrule 53.4(1). Since household assistance was available only to recipients leaving a medical institution immediately before applying for rent subsidy assistance, and legislation has removed this qualification for rent subsidy eligibility, household assistance is no longer available under this program.

- Remove a reference to assistance in purchasing necessary household furnishings and supplies in the preamble, and remove the words "and Household Assistance" from the name of the application form in subrule 53.3(1) and paragraph 53.5(2)"a."

- Rescind unnecessary definitions of "intermediate care facility for the mentally retarded (ICF/MR)" and "medical institution," which were used only in rules that are now rescinded.

These amendments do not provide for waivers in specified situations because the legislation does not provide for exceptions. Individuals may request a waiver of these requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

The Council on Human Services adopted these amendments on October 8, 2003.

These amendments are intended to implement 2003 Iowa Acts, House File 667, section 50.

These amendments shall become effective January 1, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 53**, Preamble, as follows:

Amend the introductory paragraph as follows:

This chapter defines and structures the rent subsidy program for persons who participate in a home- and community-

HUMAN SERVICES DEPARTMENT[441](cont'd)

based service (HCBS) waiver program and who: *are at risk of nursing facility placement.*

Rescind numbered paragraphs “1” through “4.”

Amend the first unnumbered paragraph as follows:

This program is designed to provide rent assistance to these persons to help them live successfully in their own home and community. ~~An eligible person may receive assistance in meeting rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies.~~

ITEM 2. Amend rule **441—53.1(79GA,HF732)** as follows:

Rescind the definitions of “intermediate care facility for the mentally retarded (ICF/MR)” and “medical institution.”

Adopt the following **new** definition in alphabetical order: “Nursing facility” means a nursing facility as defined in Iowa Code section 135C.1, subsection 13.

ITEM 3. Amend rule **441—53.2(79GA,HF732)** as follows:

Rescind and reserve subrules **53.2(2)** and **53.2(5)**.

Amend subrule 53.2(4) as follows:

53.2(4) Risk of ~~institutional nursing facility placement. Adults Applicants~~ who can avoid placement in a ~~medical institution nursing facility~~ by accessing this rent subsidy program and by use of services provided under an HCBS waiver shall be eligible for rental assistance. Applicants must ~~meet all eligibility criteria of this program, except the requirements of subrule 53.2(2), and be able to demonstrate both of the following:~~

a. That they have insufficient funds to pay their community housing costs and that insufficient funds will cause them to enter a ~~medical institution nursing facility.~~

b. That participating in an HCBS waiver will prevent them from entering a ~~medical institution nursing facility~~ and that access to this ~~rental~~ rent subsidy program is required so that they may live in a community living arrangement permitted under a waiver.

ITEM 4. Amend rule **441—53.3(79GA,HF732)** as follows:

Amend subrule 53.3(1) as follows:

Amend the introductory paragraph as follows:

53.3(1) Application process. A person who wishes to apply shall complete Form 470-3302, Application for HCBS Rent Subsidy and ~~Household Assistance~~, and provide verification of the following:

Rescind paragraph “d.”

Amend subrule 53.3(2) as follows:

53.3(2) Date of application. The date of the application shall be the date the application, including written verification of income, written verification of application to other rental assistance programs, and written verification of risk of ~~institutional nursing facility placement, if applicable,~~ is received by the bureau of long-term care.

ITEM 5. Amend rule **441—53.4(79GA,HF732)** as follows:

Amend subrule 53.4(1) as follows:

53.4(1) Use of subsidy. ~~Except as provided in subrule 53.4(3), assistance~~ Assistance shall be used for rental expense.

Rescind and reserve subrule **53.4(3)**.

ITEM 6. Amend subrule **53.5(2)**, paragraph “a,” as follows:

a. The *recipient shall submit the* completed Form 470-3302, Application for HCBS Rent Subsidy and ~~House-~~

~~hold Assistance~~, and required verification materials ~~shall be submitted annually to the Department of Human Services, Bureau of Long-Term Care, 1305 East Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319-0114.~~

ITEM 7. Amend **441—Chapter 53**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 217.6; 2001 Iowa Acts, chapter 191, section 11, subsection 3; ~~and; 2002 Iowa Acts, Second Extraordinary Session, chapter 1003, section 118, subsection 3; and 2003 Iowa Acts, House File 667, section 50, subsection 3.~~

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2898B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment increases the premiums assessed for coverage under the group “Medicaid for employed people with disabilities.” When the gross income of a disabled person in this coverage group exceeds 150 percent of the federal poverty level, the Department assesses premiums on a sliding scale, based on a percentage of the person’s income.

Iowa Code section 249A.3(2) as amended by 2003 Iowa Acts, House File 489, directs the Department to make the maximum premium “commensurate with the cost of state employees’ group health insurance.” This amendment sets new premium rates based on the increases in the cost of Iowa state employees’ group health insurance that took effect in January 2003.

This amendment increases existing premium amounts by 10 percent and adds additional increments to the scale. Currently, the maximum premium amount is \$201 per month and is assessed to all recipients with incomes over 390 percent of the federal poverty level. Under the amendment, the highest premium amount is \$355 per month and is assessed when the recipient’s income is over 632 percent of the federal poverty level.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2699B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to the Notice of Intended Action.

This amendment does not provide for waivers in specified situations because the Department believes that all recipients with similar incomes should be subject to the same premium collection. Individuals may request a waiver of the premium level under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on October 8, 2003.

This amendment is intended to implement Iowa Code section 249A.3, subsection 2, as amended by 2003 Iowa Acts, House File 489, section 2.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment shall become effective on January 1, 2004.

The following amendment is adopted.

Amend subrule **75.1(39)**, paragraph **“b,”** subparagraph (1), as follows:

(1) Premiums shall be assessed as follows:

INCOME OF THE ELIGIBLE INDIVIDUAL ABOVE:	MONTHLY PREMIUM
150% of Federal Poverty Level	\$20 \$22
174% of Federal Poverty Level	\$38 \$42
198% of Federal Poverty Level	\$56 \$62
222% of Federal Poverty Level	\$74 \$81
246% of Federal Poverty Level	\$92 \$101
270% of Federal Poverty Level	\$110 \$121
294% of Federal Poverty Level	\$128 \$141
318% of Federal Poverty Level	\$146 \$161
342% of Federal Poverty Level	\$164 \$180
366% of Federal Poverty Level	\$182 \$200
390% of Federal Poverty Level	\$201 \$221
438% of Federal Poverty Level	\$247
486% of Federal Poverty Level	\$273
534% of Federal Poverty Level	\$299
582% of Federal Poverty Level	\$325
632% of Federal Poverty Level	\$355

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2899B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments update Medicaid policies for hospitals that receive payments from the Graduate Medical Education and Disproportionate Share Fund for inpatient and outpatient services. Hospitals can qualify for payments from this fund when they report direct medical education costs, have high rates of low-income or Medicaid utilization, or meet requirements for children's hospitals.

References to data sources are updated to match the most recent rebasing period in order to reflect changes in medical education costs and disproportionate share status. For most hospitals, the information used is from the hospital's fiscal year ending in 2001. Payment amounts are updated to reflect the 3 percent deflation rate applied to hospital providers effective for state fiscal year 2002.

References to inflation and utilization increases being subject to legislative appropriations are removed, based on objections from the federal Centers for Medicare and Medicaid Services. Rules are amended to provide that inflation fac-

tors shall be set annually at levels that ensure payments that meet federal Medicaid requirements. The total allocation to the Graduate Medical Education and Disproportionate Share Fund is capped. When the amounts allocated to the Fund change, the Department will adopt rules reflecting those changes.

References to the outpatient risk corridor are removed, since they no longer apply. The risk corridor was a period specified in state fiscal years 1995 and 1996 when hospitals and the Department were held harmless from drastic changes in reimbursement due to the shift to reimbursement based on ambulatory patient groups.

References to adjustments to the Graduate Medical Education and Disproportionate Share Fund based on the Medicaid outpatient population are removed because the Department does not have authority to increase the amount allocated to the fund absent legislative appropriation. Rules requiring automatic increases without corresponding appropriations could result in a deficit.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2700B**. The Department received comments from the Iowa Hospital Association questioning whether the rules clearly spell out who is responsible for setting reimbursement rates, how the Department intends to assess whether rates meet federal guidelines, and how rules on the fund address potential changes in federal funding for disproportionate share reimbursement.

Setting payment rates is a collaborative process involving the Department, the Governor, and the General Assembly. The Department's rules cannot bind the legislature to provide annual inflation or utilization rate increases in payment rates, and the Department cannot spend funds that have not been appropriated. If additional federal funds become available, and additional rules are needed for distribution of those funds, the Department will amend the rules at that time.

These amendments are identical to the Notice of Intended Action.

These amendments do not provide for waivers in specified situations because all hospitals should be subject to the same formulas for direct and indirect medical education and disproportionate share payments. Hospitals may request a waiver of these policies under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on October 8, 2003.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on January 1, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [79.1(5), 79.1(16)] is being omitted. These amendments are identical to those published under Notice as **ARC 2700B**, IAB 8/20/03.

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

[For replacement pages for IAC, see IAC Supplement 10/29/03.]

ARC 2900B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6 and 600.22, the Department of Human Services amends Chapter 130, "General Provisions," and Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

These amendments make the following changes in policies governing eligibility for adoption subsidies:

- Eliminate minority children under two years of age and children who are at risk of (instead of diagnosed as) having mental retardation or an emotional or physical disability from the list of "special needs" that qualify a child for an adoption subsidy. Families that adopt children who are at risk for these special needs may sign an agreement for future subsidy, but subsidy payments will not begin until special needs are diagnosed.
- Limit eligibility for subsidy after a child reaches the age of 18 to children with a current diagnosis of physical or mental disability, based on a review six months before the child's eighteenth birthday.
- Clarify that unearned income of a child (other than child support from one of the adoptive parents) shall be subtracted dollar for dollar from the maximum maintenance subsidy.
- Eliminate the addition of \$1 per day to the maintenance subsidy for a sibling group of three or more children, but add a one-time payment of up to \$500 per sibling at the time of payment.
- Eliminate the biennial review of the subsidy agreement. Families may request a review when their circumstances or the child's needs change.
- Require that a child care subsidy be limited to meeting the special needs of the child through a specialized program, be subject to the same reimbursement limit as under the Child Care Assistance program, and be reviewed annually.
- Require that a family's eligibility for Child Care Assistance be determined before subsidy funds are authorized for child care needs and exclude the amount of the adoption subsidy from consideration toward the income eligibility limit for Child Care Assistance.
- Exclude families receiving a maintenance subsidy at a higher rate for "difficulty of care" from receiving a subsidy for child care.
- Add expenses up to \$2000 related to preplacement visits as an allowable category for subsidy.
- Limit the subsidy for attorney fees and court costs to \$700 for the first child and \$500 for each additional child adopted at the same time.
- Limit the subsidy for nonrecurring expenses for children entering the United States to be adopted to \$2000. This change will enforce current practice. (Nonrecurring expenses are the only type of subsidy available to these children.)
- Require families that realize a higher price on the sale of their home due to modifications funded by subsidy to refund to the Department the amount of the increased equity due to the modifications.
- Update form numbers and organizational references.

These amendments are recommended by the adoption subsidy advisory group convened in March 2003. The group consisted of representatives of Department staff, the Iowa

Foster and Adoptive Parents Association, the legal community, and adoptive parents. The group's charge was to continue to provide a full range of services to adoptive families, provide equitable access, and manage available funds.

These changes are intended to help contain costs within the adoption subsidy program while maintaining the focus of achieving and maintaining permanence for children in foster care through adoption. During the past several years, the Department has significantly increased the number of finalized adoptions of children with special needs. Currently there are more children covered by the subsidy program each month than in all levels of foster care. The Department is challenged to continue to provide quality adoption services with available resources.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 20, 2003, as **ARC 2701B**. The Department received 68 written comments on the Notice of Intended Action. The Department held eight public hearings, which were attended by 77 people. Commenters were generally concerned that these changes would limit the incentives to adopt children with special needs and would harm parents who have already made the commitment to adopt.

The Department has made two changes to the Notice of Intended Action as a result of these comments:

- Subrule 201.3(3) is amended to specify that the changes in eligibility for subsidy contained in Item 3 of these amendments will not apply to the maintenance subsidy for any child who was determined eligible for subsidy before January 1, 2004. Eligibility for subsidy is indicated by the Department's signature on Form 470-0749, Adoption Subsidy Agreement. No child will lose a maintenance subsidy as a result of these amendments. However, the amount of any on-going special services payments, including payments for child care, will be reviewed.
- Paragraph 201.5(1)"b" is amended to correct an error in the Notice indicating that the Department would not enter into an agreement for a future subsidy when a child is at risk of developing a special need in the future. Because of their earlier experiences, many children leaving foster care will fall into this category.

These amendments do not provide for waivers. Adoptive families may request a waiver of these provisions in specified situations under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on October 8, 2003.

These amendments are intended to implement Iowa Code sections 234.6, 237A.13, and 600.17 through 600.23.

These amendments shall become effective on January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **130.3(3)** by adopting the following new paragraph "**ab**":

ab. For child care assistance, any adoption subsidy payments received from the Iowa department of human services.

ITEM 2. Amend rule 441—201.1(600) as follows:

441—201.1(600) Administration. The Iowa department of human services, through the administrator of the division of ~~adult, children behavioral, developmental, and family protective~~ services for families, adults, and children, shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend rule 441—201.3(600) as follows:

Amend subrule **201.3(1)** as follows:

Rescind and reserve paragraph “c.”

Amend paragraphs “g” and “h” as follows:

g. The child is *aged two or older and is a member of a minority race or ethnic group or the child’s biological parents are of different races.*

h. The child is a member of a sibling group of three or more who are placed in the same adoptive home, ~~or a sibling group of two if one of the children has special needs because of one of the above reasons.~~

Amend subrule 201.3(2), introductory paragraph, as follows:

201.3(2) A child who enters the United States from another country, on the basis of a visa classifying the child as an orphan; ~~where the child entered the country, in accordance with the Immigration and Naturalization Act, Section 204 (4)(A)(i)(ii) for the purpose of adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses. A child entering the country for adoption may be eligible for subsidy for nonrecurring expenses, not to exceed \$2000, in the following situations:~~

Amend subrule 201.3(3) as follows:

201.3(3) ~~Subsidies~~ *Maintenance subsidies* for children who were determined to be eligible ~~prior to the effective date of this rule before January 1, 2004,~~ shall continue unless one of the conditions for termination defined in 441—201.7(600) is present.

Adopt the following new subrule:

201.3(5) The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive a subsidy through the age of 21 due to the child’s physical or mental disability.

a. The disability shall be diagnosed by a physician, a qualified mental health professional, or a qualified mental retardation professional.

b. The diagnosis shall be current within one year of the child’s eighteenth birthday.

ITEM 4. Amend rule 441—201.4(600) as follows:

Amend the introductory paragraph as follows:

441—201.4(600) Application. Application for presubsidy or subsidy shall be made on Form SS-6102-6 470-0744, (Application for Adoption Subsidy), at the time of the adoptive placement of the child, or at any time in the adoptive process ~~prior to before~~ finalization of the adoption.

Amend subrule **201.4(4)** as follows:

Amend paragraph “a” as follows:

a. There are facts relevant to a child’s eligibility that were not presented ~~prior to before~~ the finalizing of the adoption. Upon receiving verification that the child was eligible ~~prior to before~~ the child’s adoption, the department may conduct an administrative review of the facts and may determine the child an eligible special needs child. Eligibility will be effective after Form SS-6102-6 470-0744, Application for Subsidy, is completed and Form SS-6602-6 470-0749, Adoption Assistance Subsidy Agreement, is signed by all parties.

Amend paragraph “b,” unnumbered paragraph, as follows:

Requests for determining a child an eligible special needs child after the adoption is finalized shall be forwarded with verification of eligibility to the division of ~~adult, children-behavioral, developmental, and family protective services for families, adults, and children,~~ adoption program. ~~An~~ *The division shall conduct an administrative review of eligibility*

factors ~~shall be conducted~~ and *render* a written decision regarding the child’s eligibility as a special needs child ~~shall be rendered~~ within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

ITEM 5. Amend rule 441—201.5(600) as follows:

Amend subrule 201.5(1) as follows:

201.5(1) The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents, and shall be based upon the needs of the child, and the circumstances of the family.

a. Each time negotiations are completed, the Adoption Subsidy Agreement, Form SS-6602-6 470-0749, shall be completed.

b. ~~When a child is eligible for subsidy but assistance is not needed by the child or family, or when the child is at risk of being determined a child with special needs and assistance may be needed in the future, only Form 470-0762, Agreement to Future Adoption Subsidy, shall be completed and retained in an inactive case record for future reference when:~~

(1) *A child is eligible for subsidy but the child or family does not currently need assistance; or*

(2) *The child is at risk of being determined a child with special needs according to paragraph 201.3(1) “a,” “b,” “d,” or “e” in the future.*

Amend subrule 201.5(2) as follows:

201.5(2) Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used ~~prior to before~~ the expenditure of subsidy funds.

a. ~~Similarly, unearned~~ *Unearned* income of the child, from sources such as social security, veterans administration benefits, railroad compensation, trust funds, and the family’s insurance shall also be assessed and used ~~where appropriate before subsidy funds are expended to reduce the amount of the maintenance subsidy, dollar for dollar.~~

b. *Child support payments shall be excluded from consideration in computation of the maintenance subsidy.*

c. Unearned income of the child shall be verified by documentation provided to the department worker by the family from the source of the income.

Amend subrule 201.5(7) as follows:

201.5(7) ~~A An adoptive family may request a review of the child’s eligibility, subsidy agreement when there is a change in the family’s circumstances, or the needs of the child, and the child’s unearned income shall be completed every two years, or more often if necessary due to the child’s need for a special service, revision of subsidy amount because of the child’s age, or request for review by the adoptive family, by the department worker to renegotiate the type and amount of subsidy.~~

Amend subrule 201.5(9) as follows:

201.5(9) The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child found at 441—subrule 156.6(1) and 441—~~paragraphs paragraph~~ 156.6(4) “a” and “b.” If, at the time of placement, the child was receiving the special needs payment found at 441—paragraph 156.6(4) “d” or was in group care and would have been eligible for the payment if the child had been in foster care, the child shall be eligible for the payment in a subsidized adoptive placement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend subrule **201.6(1)**, paragraph “a,” as follows:

Amend subparagraph (1), introductory paragraph, as follows:

(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the ~~regional administrator service area manager~~ or designee and when one of the following applies:

Adopt the following **new** subparagraph:

(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed \$2000 per family.

Amend subparagraphs (4), (6), and (7) as follows:

(4) Child care, as required by the child's special need. When a child's special need requires day child care as determined by the physician, therapist, or other specialist, the family ~~should be advised to shall apply for family day child care assistance, or other community resources. These resources shall be used prior to the use of adoption subsidy funds. A family's eligibility for child care assistance shall be determined before subsidy funds are used. When a child receives the subsidy rate defined in 441—paragraph 156.6(4)“d,” the child is not eligible for child care reimbursement. When subsidy funds are used to pay for child care, the following conditions shall apply:~~

1. Child care may be provided inside or outside the home.

2. Child care shall be limited to meeting specific needs of the child through a specialized program.

3. The maximum reimbursement rate for child care shall not exceed the child care assistance rate.

4. The department shall review the need for child care reimbursement and the level of reimbursement at the beginning of each fiscal year.

(6) Supplies and equipment as required by the child's special needs and unavailable through other resources. When a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed \$500 per child. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

(7) Attorney fees and court costs necessary to finalize the adoption, limited to the ~~usual and customary fee for the area~~ \$700 per child. When two or more children are adopted together, the maximum reimbursement rate shall be \$700 for the first child and \$500 for each additional child. Attorney fees may be paid when the adoptive family has negotiated an Agreement to Future Adoption Subsidy, Form 470-0762.

ITEM 7. Amend **441—Chapter 201**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23, and 2004-2003 Iowa Acts, House File 732 667, section 34 29, subsection 5.

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2896B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 234.6 and 235B.5(1), the Department of Human Services amends Chapter 176, “Dependent Adult Abuse,” Iowa Administrative Code.

These amendments change rules on the Department's response to a report of suspected dependent adult abuse and on maintenance and confidentiality of abuse information. The amendments are necessary to conform the rules to statutory changes made by the Eightieth General Assembly in 2003 Iowa Acts, Senate File 416 and House File 558.

The amendments:

- Permit the Department to approve an agency and designate that agency to complete an assessment of necessary services for a dependent adult who is suspected of being abused and authorize an approved agency's access to founded abuse information. These changes will allow the Department to approve the Elder Abuse Initiative to provide assessments and to communicate more freely during a dependent adult abuse evaluation. The Elder Abuse Initiative is funded by the Senior Living Trust Fund through the Department of Elder Affairs and the area agencies on aging.

- Remove the category referred to as “undetermined reports.” Previously, Department protective service staff could find a dependent adult abuse report “undetermined” when they could not determine that there was a preponderance of evidence that the abuse was “founded” or “unfounded.” As of July 1, all reports must be determined to be either “founded” based on a preponderance of evidence or “unfounded.”

- Require the Department to maintain “unfounded” reports for one year instead of expunging them immediately.

- Allow the Department to inform a subject of a dependent adult abuse report that a person has a founded child or dependent adult abuse report or is listed on the Sex Offender Registry, if the Department determines that disclosure is necessary for the protection of the dependent adult.

- Expand access to dependent adult abuse information for entities involved in investigation of dependent adult abuse or care of a dependent adult, including multidisciplinary teams and the long-term care resident advocate in the Department of Elder Affairs.

These amendments were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2656B**. Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 2660B**. The Department received no comments on the Notice of Intended Action.

These amendments make one change to the Notice of Intended Action: correct the phrase “sexual abuse” to read “abuse” in the catchwords and both sentences of subrule 176.10(11). The intent of 2003 Iowa Acts, House File 558, is that any type of abuse history may be communicated to the subject of a report if the Department determines that disclosure is necessary for the protection of the dependent adult.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted these amendments on October 8, 2003.

These amendments are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

These amendments shall become effective January 1, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—176.6(235B) by adopting the following **new** subrule:

176.6(12) Assessments by other agencies. The department may approve agencies considered capable and appropriate to complete assessments of dependent adults who are suspected of being abused.

a. The department may make a referral to an approved agency to complete an assessment of a dependent adult who is suspected of being abused, in conjunction with a department abuse evaluation or assessment on the dependent adult.

b. The department may use information obtained from the assessment completed by the approved agency in the abuse evaluation or assessment. The department has complete authority in determining the conclusions of the abuse evaluation or assessment.

ITEM 2. Amend rule 441—176.10(235B) as follows:

Amend subrule **176.10(3)** as follows:

Amend paragraph “b” by adopting the following **new** subparagraphs:

(6) An agency approved by the department to conduct an assessment.

(7) Each board of examiners specified under Iowa Code chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

Amend paragraph “c” by adopting the following **new** subparagraph:

(8) The long-term care resident advocate, if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

Rescind and reserve subrule **176.10(5)**.

Amend subrule 176.10(6) as follows:

176.10(6) Access to unfounded dependent adult abuse information. Access to unfounded dependent adult abuse information is authorized only to:

a. ~~persons~~ *Persons* identified as subjects of a report, including the *dependent* adult named in a report as a victim, a guardian of a dependent adult named in a report as a victim, a person named in a report as having abused a dependent adult, or an attorney representing any of the above;

b. ~~an~~ An employee or agency of the department of human services responsible for the evaluation or assessment of a dependent adult abuse report; ~~and~~

c. ~~registry~~ *Registry* or department personnel, when necessary to the performance of their official duties, or a person or agency under contract with the department to carry out official duties and functions of the registry;

d. *The mandatory reporter who reported dependent adult abuse in an individual case;*

e. *The long-term care resident advocate, if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility; and*

f. *A multidisciplinary team, if the department approves the composition of the team and determines that access to the*

team is necessary to assist in the evaluation, diagnosis, assessment, and disposition of a dependent adult abuse case.

Adopt the following **new** subrule:

176.10(11) Subjects informed of abuse history. The department may inform a subject of a dependent adult abuse report of a person’s abuse history if the department determines at any time that disclosure is necessary for the protection of the dependent adult. A subject may be informed that a person is listed on the child or dependent adult abuse registry as having a founded abuse report or is listed on the sex offender registry.

ITEM 3. Amend rule 441—176.13(235B) as follows:

Amend subrule 176.13(2) as follows:

176.13(2) Unfounded reports. A report of dependent adult abuse determined to be unfounded shall be expunged ~~when one year from the date~~ it is determined to be unfounded, in accordance with Iowa Code section 235B.9, subsection 2.

Rescind and reserve subrule **176.13(3)**.

ITEM 4. Amend **441—Chapter 176**, implementation clause, as follows:

These rules are intended to implement Iowa Code chapter 235B as amended by 2003 Iowa Acts, Senate File 416 and House File 558.

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2897B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 202, “Foster Care Services,” Iowa Administrative Code.

These amendments conform the rule on voluntary foster care placements to statutory changes made by 2003 Iowa Acts, House File 667, section 37. That legislation extends from 30 days to 90 days the potential duration of a foster care placement made on a voluntary basis for a child under the age of 18. (Longer placements must be authorized by juvenile court action.) The amendments also make technical changes to update the form number of the Voluntary Placement Agreement and the title of the Department employee responsible for approving the Voluntary Placement Agreement, for clarity.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

These amendments were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2655B**. Notice of Intended Action on these amendments was published on the same date as **ARC 2659B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on October 8, 2003.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 234.35(1)“c” as amended by 2003 Iowa Acts, House File 667, section 37.

These amendments shall become effective January 1, 2004, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

Amend rule 441—202.3(234) as follows:

Amend subrules 202.3(1) and 202.3(2) as follows:

202.3(1) All voluntary placement agreements initiated after ~~June 30, 1992~~ *July 1, 2003*, for children under the age of 18 shall terminate after ~~30~~ *90* days. ~~For all voluntary placements initiated before July 1, 1992, the department shall file a petition with the court for approval on or before September 1, 1992.~~

202.3(2) When the voluntary placement is of a child who is under the age of 18, a Voluntary Foster Care Placement Agreement, Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the parent(s) or guardian and the county office where the parent or guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with parents or guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's parent or guardian moves outside Iowa after the placement.

Amend subrule **202.3(3)**, paragraphs “a” and “b,” as follows:

a. When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the guardian and the county office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

b. When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement, Form ~~SS-2604~~ *470-0715*, shall be completed and signed by the child and the county office where the child resides.

Amend subrule 202.3(4) as follows:

202.3(4) All voluntary placements shall be approved by the ~~regional administrator~~ *service area manager* or designee.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 234.6(6)“b” and *section 234.35(1)“c” as amended by 1992 2003 Iowa Acts, House File 2480 667, sections 11 and 12 section 37.*

[Filed 10/10/03, effective 1/1/04]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2910B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 94, “Nonresident Deer Hunting,” Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. This amendment allows nonresident hunters to obtain an antlerless-only deer license to hunt from December 24 through January 2.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 3, 2003, as **ARC 2732B**. A public hearing was held in the Wallace State Office Building on September 30, 2003. No public comments were received during the public comment period or at the public hearing. The final adopted amendment is unchanged from the Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

This amendment shall become effective December 3, 2003.

The following amendment is adopted.

Amend subrule 94.8(2), introductory paragraph, as follows:

94.8(2) Antlerless-only deer licenses. Licenses for taking antlerless-only deer will be available on the same date as excess any-sex licenses are sold as explained in 94.8(1). Antlerless-only licenses will be sold first-come, first-served until the statewide quota is filled, or until the last day of the season for which a license is valid, ~~or until December 14, whichever occurs first.~~ *If antlerless-only licenses are still available on December 15, they may be purchased by nonresidents to hunt during the period from December 24 through January 2. These licenses will be available to nonresidents who have not purchased a nonresident deer license during one of the current deer seasons. The cost will be \$50, and the hunter must have in possession a valid nonresident small game hunting license and proof of having paid the current year's wildlife habitat fee.* Antlerless-only licenses will be issued by seasons and zone and will be valid only in the season and zone designated on the license.

[Filed 10/10/03, effective 12/3/03]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2909B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

These amendments clarify the rules for block deer hunts that are held to reduce deer depredation on private property.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 9, 2003, as **ARC 2599B**. A public hearing was held in the Wallace State Office Building on July 31, 2003. No public comments were received during the public comment period or at the public hearing. The final adopted amendments are unchanged from the Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

These amendments shall become effective December 3, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **106.11(4)**, paragraph "a," subparagraph (7), as follows:

(7) Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless *the* land is within a designated block hunt area *as described in subparagraph (8)*. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

ITEM 2. Amend subrule **106.11(4)**, paragraph "a," by adopting the following new subparagraph (8):

(8) Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation permits issued to producers within the block hunt zone are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt boundaries. Creation of a given block hunt area does not authorize trespass.

[Filed 10/10/03, effective 12/3/03]

[Published 10/29/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2891B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Podiatry Examiners hereby amends Chapter 223, "Continuing Education for Podiatrists," and

Chapter 223, "Practice of Podiatry," Iowa Administrative Code.

The amendments rescind the current rule for utilization and cost control review, which was a part of the approved agency plan for rule revisions. Rules pertaining to the utilization of conscious sedation on podiatric patients are adopted to implement Iowa Code chapter 149 as amended by 2003 Iowa Acts, House File 503.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2672B**. A public hearing was held on August 26, 2003, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. The Division received public comments from the Iowa Podiatric Medical Society (IPMS) and the Iowa Association of Nurse Anesthetists.

The following changes have been made to the Notice of Intended Action:

IPMS found that six hours of continuing education in the area of conscious sedation was excessive, and stated that completion of two hours would be sufficient to keep up with any changes in the process. As a result of the comment, the Board revised new paragraph 223.2(2)"b" to require a podiatrist who utilizes conscious sedation to "obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics."

Subrule 223.2(1) was rewritten in response to public comment received from IPMS.

- The Board will not specify the length of a formal anesthesiology rotation in a residency program and instead finds that having successfully completed a formal anesthesiology rotation in a residency program will suffice as proof of procedure knowledge.

- The Board will not require the signature of the residency director to verify completion of the anesthesiology rotation, in response to IPMS comments that in some cases a signature from a residency director may be difficult to obtain if a particular residency program had been dissolved or the hospital where the residency occurred closed.

- The Board changed the date by which documentation of education and experience must be received from October 1, 2004, to January 1, 2005, in order to grandfather in those podiatrists who currently use conscious sedation in lieu of those podiatrists' having to complete a formal residency program.

Subrule 223.2(2) was renumbered as 223.2(3) and rewritten to reflect that a minimum of one hour of continuing education is required for license renewal beginning with the renewal cycle of July 1, 2004, to June 30, 2006. The following sentence was also added: "Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license."

Subrule 223.2(3) was renumbered as 223.2(4) and the phrase "deep sedation or" was added.

Subrule 223.2(5) was renumbered as 223.2(6) and new paragraphs "g" and "h" were added.

Subrule 223.2(7) was renumbered as 223.2(8) and new paragraph "h" was added.

These amendments will become effective December 3, 2003.

These amendments are intended to implement Iowa Code chapter 149 as amended by 2003 Iowa Acts, House File 503, and Iowa Code section 272C.3.

The following amendments are adopted.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Amend subrule **222.3(2)** by relettering paragraphs “b” to “f” as “c” to “g” and adopting the following new paragraph “b”:

b. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics;

ITEM 2. Rescind rule 645—223.1(514F) and adopt the following new rule in lieu thereof:

645—223.1(149) Definitions. For the purposes of these rules, the following definitions shall apply:

“Ambulatory surgical center” or “ASC” means an ambulatory surgical center that has in effect an agreement with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, in accordance with 42 CFR Part 416.

“Conscious sedation” means a depressed level of consciousness produced by the administration of pharmacological substances that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

ITEM 3. Renumber rules **645—223.2(139A)** and **645—223.3(149)** as **645—223.3(139A)** and **645—223.4(149)** and adopt the following new rule 645—223.2(149):

645—223.2(149) Requirements for administering conscious sedation. A licensed podiatrist who holds a permanent license in good standing may use conscious sedation for podiatric patients on an outpatient basis in a hospital or ASC after the podiatrist has submitted to the board office an attestation on a form approved by the board.

223.2(1) The attestation shall include:

a. Evidence of successful completion within the past five years of a formal anesthesiology rotation in a residency program approved by the Council on Podiatric Medical Education (CPME); or

b. For a podiatrist who does not meet the requirements of paragraph “a,” an attestation with evidence that the podiatrist is authorized by the governing body of a hospital or ASC to use conscious sedation. This attestation must be received by the board prior to January 1, 2005.

223.2(2) The podiatrist shall provide verification of current certification in Basic Cardiac Life Support (BCLS) or Advanced Cardiac Life Support (ACLS).

223.2(3) A podiatrist who has an attestation on file and continues to use conscious sedation shall meet the requirements of 645—Chapter 222 at the time of license renewal. A minimum of one hour of continuing education in the area of conscious sedation or related topics shall be required beginning with the renewal cycle of July 1, 2004, to June 30, 2006. Continuing education credit in the area of conscious sedation may be applied toward the 40 hours of continuing education required for renewal of the license. In addition, the podiatrist shall maintain current certification in BCLS or ACLS.

223.2(4) A podiatrist shall only utilize conscious sedation in a hospital or ASC when the podiatrist has been granted clinical privileges by the governing body of the hospital or ASC in accordance with approved policies and procedures of the hospital or ASC.

223.2(5) It is a violation of the standard of care for a podiatrist to use conscious sedation agents that result in a deep sedation or general anesthetic state.

223.2(6) Reporting of adverse occurrences related to conscious sedation. A licensed podiatrist who has an attestation on file with the board must submit a report to the board within 30 days of any mortality or other incident which results in

temporary or permanent physical or mental injury requiring hospitalization of the patient during or as a result of conscious sedation. The report shall include the following:

- a. Description of podiatric procedures;
- b. Description of preoperative physical condition of patient;
- c. List of drugs and dosage administered;
- d. Description, in detail, of techniques utilized in administering the drugs;
- e. Description of adverse occurrence, including:
 - (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
 - (2) Treatment instituted;
 - (3) Response of the patient to treatment;
- f. Description of the patient’s condition on termination of any procedures undertaken;
- g. If a patient is transferred, a statement providing where and to whom; and
- h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(7) Failure to report. Failure to comply with subrule 223.2(6) when the adverse occurrence is related to the use of conscious sedation may result in the podiatrist’s loss of authorization to administer conscious sedation or in other sanctions provided by law.

223.2(8) Record keeping. The patient’s chart must include:

- a. Preoperative and postoperative vital signs;
- b. Drugs administered;
- c. Dosage administered;
- d. Anesthesia time in minutes;
- e. Monitors used;
- f. Intermittent vital signs recorded during procedures and until the patient is fully alert and oriented with stable vital signs;
- g. Name of the person to whom the patient was discharged; and
- h. Name of the registered nurse who is trained to administer conscious sedation and who assisted in the procedure.

223.2(9) Failure to comply with these rules is grounds for discipline.

[Filed 10/10/03, effective 12/3/03]

[Published 10/29/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/03.

ARC 2886B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 100.1, 100.35 and 231C.4, the Department of Public Safety hereby amends amend Chapter 5, “Fire Marshal,” Iowa Administrative Code.

Iowa Code section 100.1, subsection 5, assigns to the State Fire Marshal the exclusive authority to adopt fire safety rules in Iowa. Iowa Code section 100.35 enumerates various sorts of occupancies, including hospitals and licensed health care facilities, for which the State Fire Marshal is required to adopt rules. Iowa Code section 231C.4 authorizes the State

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Fire Marshal to adopt fire safety requirements for assisted living facilities, in coordination with the Department of Elder Affairs.

Hospitals, licensed health care facilities, and assisted living facilities in Iowa are required to comply with fire safety requirements established by the State Fire Marshal in order to obtain and maintain licensure or certification. In addition, hospitals and licensed health care facilities are to comply with fire safety requirements established by the federal Centers for Medicare and Medicaid Services in order to be eligible for reimbursement under the Medicare and Medicaid programs. The federal fire safety regulations were changed so that, as of March 11, 2003, the fire safety requirements for facilities providing services subject to reimbursement from Medicare or Medicaid are based on compliance with provisions from the 2000 edition of the Life Safety Code published by the National Fire Protection Association applicable to the particular type of facility. As of September 11, 2003, each individual facility providing services under the Medicare and Medicaid programs is required to be in compliance with applicable provisions of the 2000 edition of the Life Safety Code.

Amendments intended to ease the transition to the new requirements for facilities subject both to the rules of the State Fire Marshal and to the fire safety regulations of the Centers for Medicare and Medicaid Services were adopted through emergency rule-making procedures and were effective March 11, 2003. The emergency rules were published in the Iowa Administrative Bulletin on April 2, 2003, as **ARC 2365B**. Generally, the approach taken was to allow the continued use of the existing requirements, most of which are based upon the 1985 edition of the Life Safety Code, or the use of the new requirements until September 11, 2003, and then to require compliance with the new requirements as of September 11, 2003. Among the provisions that were allowed to be used until September 11, 2003, were those that allowed, in limited cases, compliance with provisions of earlier editions of the Life Safety Code. Also, plan reviews for new facilities, including additions or facilities engaging in major renovation or remodeling, were based upon the new requirements as of March 11, 2003.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on May 28, 2003, as **ARC 2487B**. The Notice contained the following changes from the amendments that were Adopted and Filed Emergency as **ARC 2365B**:

- Language in subrule 5.626(4) referring to assisted living facilities seeking certification from the federal Centers for Medicare and Medicaid Services is not included, as this reference was included mistakenly in the emergency rule making. Assisted living facilities are not required to, nor are they able to, receive certification from the Centers for Medicare and Medicaid Services. In those cases where an assisted living facility receives reimbursement from the federal agency, it is pursuant to a waiver and does not require the facility to be federally certified.

- Provisions regarding intermediate care facilities for the mentally retarded (ICFs/MR) are changed to reflect enactment of 2003 Iowa Acts, House File 387. Prior to enactment of House File 387, ICFs/MR were required to comply with requirements of the 1985 edition of the Life Safety Code (Iowa Code section 135C.2, subsection 3, paragraph "c"). House File 387 amended the Iowa statute to require compliance with the 2000 edition of the Life Safety Code, which is consistent with the new federal requirements.

- For ICFs/MR and intermediate care facilities for persons with mental illness (ICFs/PMI), an exception in the Life Safety Code, 2000 edition, regarding sprinklering in facilities with eight or fewer beds which have been converted from other residential occupancies is deleted. Implementation of the exception would require staff of the Fire Marshal Division to determine the evacuation capability of residents and would require revisits by staff of the Division each time a new resident is admitted, neither of which is practical.

A public hearing regarding the amendments was held on June 19, 2003. No comments regarding the amendments were received either at the public hearing or otherwise.

The following changes have been made from the Notice:

- Exceptions which applied until September 11, 2003, have been eliminated.

- In rule 5.915(100), provisions of the Life Safety Code, the implementation of which is dependent upon an evacuation capability rating, have been reworded or deleted in order to clarify that any requirement that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical."

- Separate rules regarding ICFs/MR and ICFs/PMI have been combined into a single rule. These facilities are subject to the same provisions of the Life Safety Code.

These amendments are intended to implement Iowa Code section 100.35 and chapters 135B, 135J and 231C and chapter 135C as amended by 2003 Iowa Acts, House File 387, and 42 CFR Parts 403, 416, 418, 482 and 483.

These amendments will become effective January 1, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 661—5.626(231C) as follows:

Amend subrule **5.626(1)** by rescinding the definition of "NFPA" and adopting in lieu thereof the following **new** definition in alphabetical order:

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

Rescind subrule 5.626(4) and adopt in lieu thereof the following **new** subrule:

5.626(4) Alternative requirements. In lieu of complying with the requirements established in subrule 5.626(2) or 5.626(3), assisted living facilities may alternatively comply with the requirements established in this subrule.

a. An assisted living facility that begins operation on or after September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project on or after March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 32, in lieu of compliance with the requirements established in subrule 5.626(2).

b. An assisted living facility that begins operation prior to September 11, 2003, or that received plan approval for initial construction or for its most recent addition or renovation or remodeling project prior to March 11, 2003, may comply with the requirements established in NFPA 101, Life Safety Code, 2000 edition, Chapter 33, in lieu of compliance with the requirements established in subrule 5.626(3).

ITEM 2. Rescind rules **661—5.900(100)** through **5.925(100)** and adopt in lieu thereof the following **new** rules:

661—5.900(100) Definitions. The following definitions apply to rules 661—5.900(100) through 661—5.925(100).

"Ambulatory health care facility" means a facility or portion thereof used to provide services or treatment that pro-

PUBLIC SAFETY DEPARTMENT[661](cont'd)

vides, on an outpatient basis, treatment for one or more patients that renders the patients incapable of taking action for self-preservation under emergency conditions without the assistance of others; or provides, on an outpatient basis, anesthesia that renders the patient incapable of taking action for self-preservation under emergency conditions without the assistance of others.

"Existing" means that a facility (1) has been in continuous operation under its current classification of occupancy since before September 11, 2003, and has not undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (2) received plan approval for initial construction or for its most recent renovation or remodeling project, including an addition, if any, from the building code bureau of the fire marshal division prior to March 11, 2003.

"Hospice" means a facility licensed or seeking licensure pursuant to Iowa Code section 135J.2.

"Hospital" means a facility licensed or seeking licensure pursuant to Iowa Code chapter 135B.

"Intermediate care facility for the mentally retarded" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.2(3)"c" as amended by 2003 Iowa Acts, House File 387, section 1.

"New" means that a facility (1) commenced continuous operation under its current classification of occupancy on or after September 11, 2003, (2) has undergone renovation or remodeling, including an addition, on or after September 11, 2003, or (3) received plan approval from the building code bureau of the fire marshal division for the initial construction of the facility or the most recent renovation of or addition to the facility on or after March 11, 2003.

"NFPA" means the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. References to the form "NFPA xx," where "xx" is a number, refer to the NFPA standard or pamphlet of the corresponding number.

"Nursing facility" means a facility licensed or seeking licensure pursuant to Iowa Code section 135C.6, including a nursing facility for intermediate care or a nursing facility for skilled care.

661—5.901 to 5.904 Reserved.

661—5.905(100) Hospitals.

5.905(1) New hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new hospitals.

5.905(2) Existing hospitals. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing hospitals, with the following amendments:

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

Section 19.2.9 is not effective prior to March 13, 2006.

661—5.906 to 5.909 Reserved.

661—5.910(100) Nursing facilities and hospices.

5.910(1) New nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new nursing facilities and hospices that provide inpatient care directly.

5.910(2) Existing nursing facilities and hospices. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing nursing facilities and hospices that provide inpatient care directly, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

661—5.911 to 5.914 Reserved.

661—5.915(100) Intermediate care facilities for the mentally retarded and intermediate care facilities for persons with mental illness.

5.915(1) New intermediate care facilities. New intermediate care facilities for the mentally retarded and new intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 18.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 32, with the following amendments:

NOTE: Any requirement contained within Chapter 32 that is based on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which is dependent upon an evacuation capability rating other than "impractical" shall be unavailable.

(1) Delete Section 32.2.1.2.1 and insert in lieu thereof the following new section:

32.2.1.2.1

Small facilities shall comply with the requirements of Section 32.2 as indicated for an evacuation capability of impractical.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(2) Delete Section 32.2.1.2.2 and insert in lieu thereof the following new section:

32.2.1.2.2

The evacuation capability shall be classified as impractical.

(3) Delete Exception No. 1 to Section 32.2.2.1.

(4) Delete Exceptions No. 2 and No. 3 to Section 32.2.2.4.

(5) Delete the Exception to Section 32.2.3.3.2.

(6) Delete Exception No. 1 to Section 32.2.3.5.1.

(7) Delete Exceptions No. 1, No. 3 and No. 4 to Section 32.2.3.5.2.

(8) Delete Exception No. 2 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 2:

Exception No. 2: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Facilities with more than eight residents shall be treated as two-family dwellings with regard to water supply.

(9) Delete Exception No. 5 to Section 32.2.3.5.2 and insert in lieu thereof the following new Exception No. 5:

Exception No. 5: In facilities up to and including four stories in height, systems in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered.

(10) Delete Section 32.2.3.5.3.

(11) Delete Section 32.2.3.5.4 and insert in lieu thereof the following new section:

32.2.3.5.4

Automatic sprinkler systems shall be supervised in accordance with Section 9.7.

(12) Delete Exception No. 1 to Section 32.2.3.6.1.

(13) Delete Section 32.3.1.2.1.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

(14) Delete Section 32.3.1.2.2 and insert in lieu thereof the following new section:

32.3.1.2.2

Large facilities shall meet the requirements for limited care facilities in Chapter 18.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(15) Delete Section 32.3.1.2.3.

(16) Delete the Exception to Section 32.3.1.3.3, paragraph (a).

(17) Delete Section 32.4.1.4 and insert in lieu thereof the following new section:

32.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 30, apartment buildings housing residential board and care facilities shall meet the construction requirements of 18.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

Exception: If the new board and care occupancy is created in an existing apartment building, the construction requirements of 19.1.6 shall apply.

(18) Delete Exception No. 2 to Section 32.7.3 and insert in lieu thereof the following new Exception No. 2:

Exception No. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 18.7 shall apply in such instances.

5.915(2) Existing intermediate care facilities. Existing intermediate care facilities for the mentally retarded and existing intermediate care facilities for persons with mental illness shall comply with the provisions of one of the following:

a. NFPA 101, Life Safety Code, 2000 edition, Chapter 19.

b. NFPA 101, Life Safety Code, 2000 edition, Chapter 33, with the following amendments:

NOTE: Any requirement contained in Chapter 33 that is determined on a rating of evacuation capability shall be based upon an evacuation capability rating of "impractical." Any provision which depends upon an evacuation rating of "prompt" or "slow" shall be unavailable.

(1) Delete Section 33.1.7.

(2) Delete Section 33.2.1.2.1 and insert in lieu thereof the following new section:

33.2.1.2.1

Small facilities shall comply with the requirements of Section 33.2.

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(3) Delete Section 33.2.1.2.2 and insert in lieu thereof the following new section:

33.2.1.2.2

The evacuation capability shall be classified as impractical.

(4) Delete Section 33.2.1.3 and insert in lieu thereof the following new section:

33.2.1.3 Minimum Construction Requirements.

Buildings shall be of any construction type in accordance with 8.2.1 other than Type II(000), Type III(200), or Type V(000) construction.

Exception: Buildings protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5 shall be permitted to be of any type of construction.

(5) Delete Exception No. 1 to Section 33.2.2.1.

(6) Delete Section 33.2.2.2.2 and insert in lieu thereof the following new section:

33.2.2.2.2

The primary means of escape for each sleeping room shall not be exposed to living areas and kitchens.

Exception: Buildings equipped with quick-response or residential sprinklers throughout. Standard response sprinklers shall be permitted for use in hazardous areas in accordance with 33.2.3.2.

(7) Delete Exception No. 2, Exception No. 3, and Exception No. 4 to Section 33.2.2.4.

(8) Delete the Exception to Section 33.2.3.3.

(9) Delete Section 33.2.3.5.2 and insert in lieu thereof the following new section:

33.2.3.5.2*

Where an automatic sprinkler system is installed, for either total or partial building coverage, the system shall be in accordance with Section 9.7 and shall activate the fire alarm system in accordance with 33.2.3.4.1. The adequacy of the water supply shall be documented to the authority having jurisdiction.

Exception No. 1: An automatic sprinkler system in accordance with NFPA 13D, Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes, with a 30-minute water supply, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

Exception No. 2: In facilities up to and including four stories in height, systems installed in accordance with NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, shall be permitted. All habitable areas and closets shall be sprinklered. Automatic sprinklers shall not be required in bathrooms not exceeding 55 ft² (5.1 m²), provided that such spaces are finished with lath and plaster or materials providing a 15-minute thermal barrier.

Exception No. 3: Initiation of the fire alarm system shall not be required for existing installations in accordance with 33.2.3.5.5.

(10) Delete Section 33.2.3.5.3 and insert in lieu thereof the following new section:

33.2.3.5.3

All facilities shall be protected throughout by an approved, supervised automatic sprinkler system in accordance with 33.2.3.5.2.

(11) Delete Exception No. 1 and Exception No. 4 to Section 33.2.3.6.1.

(12) Delete Section 33.3.1.1 and insert in lieu thereof the following new section:

33.3.1.1 Scope.

Section 33.3 applies to residential board and care occupancies providing sleeping accommodations for more than 16 residents. Facilities having sleeping accommodations for not more than 16 residents shall be evaluated in accordance with Section 33.2.

(13) Delete Section 33.3.1.2 and insert in lieu thereof the following new section:

33.3.1.2 Requirements.

Large facilities shall meet the requirements for limited care facilities in Chapter 19.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Exception*: Facilities where the authority having jurisdiction has determined equivalent safety is provided in accordance with Section 1.5.

(14) Delete the Exception to Section 33.3.1.3.3, paragraph (a).

(15) Delete Exception No. 2 to Section 33.3.3.6.1.

(16) Delete Exception No. 2 to Section 33.3.3.6.3.

(17) Delete Section 33.4.1.3 and insert in lieu thereof the following new section:

33.4.1.3 Requirements.

33.4.1.3.1

Apartment buildings housing board and care facilities shall comply with the requirements of Section 33.4.

Exception*: Facilities where the authority having jurisdiction has determined that equivalent safety for housing a residential board and care facility is provided in accordance with Section 1.5.

33.4.1.3.2

All facilities shall meet the requirements of Chapter 31 and the additional requirements of Section 33.4.

(18) Delete Section 33.4.1.4 and insert in lieu thereof the following new section:

33.4.1.4 Minimum Construction Requirements.

In addition to the requirements of Chapter 31, apartment buildings housing residential board and care facilities shall meet the construction requirements of 19.1.6. In applying the construction requirements, the height shall be determined by the height of the residential board and care facility measured above the primary level of exit discharge.

(19) Delete Exception No. 2 to Section 33.7.3 and insert in lieu thereof the following new exception:

Exception No. 2: Those residents who cannot meaningfully assist in their own evacuation or who have special health problems shall not be required to actively participate in the drill. Section 19.7 shall apply in such instances.

661—5.916 to 5.919 Reserved.

661—5.920(100) Ambulatory health care facilities.

5.920(1) New ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 20, is adopted by reference as the fire safety rules for new ambulatory health care facilities.

5.920(2) Existing ambulatory health care facilities. NFPA 101, Life Safety Code, 2000 edition, Chapter 21, is adopted by reference as the fire safety rules for existing ambulatory health care facilities, with the following amendments:

Section 21.2.9.1 is not effective prior to March 13, 2006.

661—5.921 to 5.924 Reserved.

661—5.925(100) Religious nonmedical health care institutions.

5.925(1) New religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 18, is adopted by reference as the fire safety rules for new religious nonmedical health care institutions.

5.925(2) Existing religious nonmedical health care institutions. NFPA 101, Life Safety Code, 2000 edition, Chapter 19, is adopted by reference as the fire safety rules for existing religious nonmedical health care institutions, with the following amendments:

Section 19.2.9 is not effective prior to March 13, 2006.

Effective March 13, 2006, Section 19.3.6.3.2, Exception No. 2, is deleted.

Rules 661—5.900(100) to 661—5.925(100) are intended to implement Iowa Code section 100.35.

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